

# STATE OF NEW YORK

5242--A

2017-2018 Regular Sessions

## IN SENATE

March 16, 2017

Introduced by Sens. FUNKE, AKSHAR, CROCI, DeFRANCISCO, GOLDEN, HELMING  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Investigations and Government Operations -- 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 emer-  
gency declared by the governor or the President of the United States

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

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

### ARTICLE 42

#### FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTER

##### Section 3100. Short title.

##### 3101. Definitions.

##### 3102. Business and employee status during disaster period.

##### 3103. Transaction taxes and fees.

##### 3104. Business or employee activity after disaster period.

##### 3105. Notification of out-of-state business during disaster period.

##### 3106. Notification of intent to remain in state.

##### 3107. Tax exempt overtime earnings.

##### 3108. Severability.

15 § 3100. Short title. This article shall be known and may be cited as  
16 the "facilitating business rapid response to state declared disasters  
17 act of 2017".

18 § 3101. Definitions. For purposes of this article, the following terms  
19 shall have the following meanings:

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

LBD10662-03-7

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. "Critical infrastructure" means property and equipment owned or  
17 used by communications networks, electric generation, transmission and  
18 distribution systems, gas distribution systems, water pipelines, and  
19 related support facilities that service multiple customers or citizens  
20 including, but not limited to, real and personal property such as build-  
21 ings, offices, lines, poles, pipes, structures and equipment.

22 5. "Declared state disaster or emergency" means a disaster or emergen-  
23 cy event (a) for which the governor has declared a state of emergency,  
24 (b) for which a Presidential declaration of a federal major disaster or  
25 emergency has been issued, or (c) other disaster or emergency event  
26 within the state for which a good faith response effort is required, and  
27 for which the director of the state office of emergency management is  
28 given notification from the registered business and such director desig-  
29 nates such event as a disaster or emergency thereby invoking the  
30 provisions of this article.

31 6. "Disaster period" means a period that begins within ten days of the  
32 first day of the governor's declaration or the President's declaration  
33 (whichever occurs first) and that extends for a period of sixty calendar  
34 days after the end of the declared disaster or emergency period, or for  
35 any longer period authorized by the commissioner.

36 7. "Disaster or emergency related work" means repairing, renovating,  
37 installing, building, rendering services or other business activities  
38 that relate to critical infrastructure that has been damaged, impaired  
39 or destroyed by the declared state disaster or emergency.

40 § 3102. Business and employee status during disaster period. 1. An  
41 out-of-state business that conducts operations within the state for  
42 purposes of performing work or services related to a declared state  
43 disaster or emergency during the disaster period shall not be considered  
44 to have established a level of presence that would require that business  
45 to register, file and/or remit state or local taxes or that would  
46 require that business or its out-of-state employees to be subject to any  
47 state licensing or registration requirements. This includes any and all  
48 state or local business licensing or registration requirements or state  
49 and local taxes or fees including, but not limited to, unemployment  
50 insurance, sales and use tax or ad valorem tax on equipment brought into  
51 the state temporarily for use during the disaster period and then subse-  
52 quently removed from the state. For purposes of any state or local tax  
53 on or measured by, in whole or in part, net or gross income, including  
54 base and overtime pay, or receipts, all activity of the out-of-state  
55 business that is conducted in this state pursuant to this article shall  
56 not be treated as occurring in this state with respect to any filing

1 requirements for such tax including the filing required for a unitary or  
2 combined group of which the out-of-state business may be a part. Also,  
3 for the purposes of apportioning income, revenue, or receipts the  
4 performance by an out-of-state business of any disaster or emergency  
5 related work shall not be sourced to or shall not otherwise impact or  
6 increase the amount of income, revenue, or receipts apportioned to this  
7 state.

8 2. Any out-of-state employee as defined in subdivision three of  
9 section thirty-one hundred one of this article shall not be considered  
10 to have established residency or a presence in the state that would  
11 require that person or that person's employer to file and pay income  
12 taxes or to be subjected to tax withholdings or to file and pay any  
13 other state or local tax or fee during the disaster period. This  
14 includes any related state or local employer withholding and remittance  
15 obligations for any out-of-state employee's base and overtime pay.

16 § 3103. Transaction taxes and fees. Out-of-state businesses and out-  
17 of-state employees shall be required to pay transaction taxes and fees  
18 including but not limited to fuel taxes or sales/use taxes on materials  
19 or services subject to sales/use tax, hotel taxes, car rental taxes or  
20 fees that the out-of-state affiliated business or out-of-state employee  
21 purchases for use or consumption in the state during the disaster peri-  
22 od, unless such taxes are otherwise exempted during a disaster period.

23 § 3104. Business or employee activity after disaster period. Any out-  
24 of-state business or out-of-state employee that remains in the state  
25 after the disaster period will become subject to the state's normal  
26 standards for establishing presence, residency or doing business in the  
27 state and will therefore become responsible for any business or employee  
28 tax requirements that ensue.

29 § 3105. Notification of out-of-state business during disaster period.  
30 1. The out-of-state business that enters the state shall, upon request,  
31 provide the department a statement that it is in the state for purposes  
32 of responding to the disaster or emergency, which statement shall  
33 include the business' name, state of domicile, principal business  
34 address, federal tax identification number, date of entry, and contact  
35 information.

36 2. A registered business in the state shall, upon request, provide the  
37 information required in subdivision one of this section for any affil-  
38 iate that enters the state that is an out-of-state business. The notifi-  
39 cation shall also include contact information for the registered busi-  
40 ness in the state.

41 § 3106. Notification of intent to remain in state. An out-of-state  
42 business or an out-of-state employee that remains in the state after the  
43 disaster period shall complete state and local registration, licensing  
44 and filing requirements that ensue as a result of establishing the  
45 requisite business presence or residency in the state applicable under  
46 the existing rules.

47 § 3107. Tax exempt overtime earnings. Any income of a New York resi-  
48 dent individual which is attributable to overtime hours during a  
49 declared state disaster or emergency and which is disaster or emergency  
50 related work, as such terms are defined in this article, shall be exempt  
51 from taxation under article twenty-two of this chapter.

52 § 3108. Severability. If any clause, sentence, paragraph, section or  
53 part of this article shall be adjudged by any court of competent juris-  
54 diction to be invalid, the judgment shall not affect, impair, or invali-  
55 date the remainder thereof, but shall be confined in its operation to  
56 the clause, sentence, paragraph, section or part thereof directly

1 involved in the controversy in which the judgment shall have been  
2 rendered.

3 § 2. This act shall take effect immediately. Provided, however, the  
4 commissioner of the department of taxation and finance is authorized to  
5 promulgate any rules or regulations, and develop and issue forms or  
6 online processes necessary for the timely implementation of this act.