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 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:

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

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

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

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

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1. "Registered business in the state" (or "registered business") means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

2. "Out-of-state business" means a business entity that has no presence in the state and conducts no business in the state whose services are requested by a registered business or by a state or local government for purposes of performing disaster or emergency related work in the state. Out-of-state business shall also include a business entity that is affiliated with the registered business in the state solely through common ownership. The out-of-state business has no registrations or tax filings or nexus in the state prior to the declared state disaster or emergency.

3. "Out-of-state employee" means an employee who does not work in the state, except for disaster or emergency related work, during the disaster period.

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

5. "Declared state disaster or emergency" means a disaster or emergency event (a) for which the governor has declared a state of emergency, (b) for which a Presidential declaration of a federal major disaster or emergency has been issued, or (c) other disaster or emergency event within the state for which a good faith response effort is required, and for which the director of the state office of emergency management is given notification from the registered business and such director designates such event as a disaster or emergency thereby invoking the provisions of this article.

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

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

§ 3102. Business and employee status during disaster period. 1. An out-of-state business that conducts operations within the state for purposes of performing work or services related to a declared state disaster or emergency during the disaster period shall not be considered to have established a level of presence that would require that business to register, file and/or remit state or local taxes or that would require that business or its out-of-state employees to be subject to any state licensing or registration requirements. This includes any and all state or local business licensing or registration requirements or state and local taxes or fees including, but not limited to, unemployment insurance, sales and use tax or ad valorem tax on equipment brought into the state temporarily for use during the disaster period and then subsequently removed from the state. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income, including base and overtime pay, or receipts, all activity of the out-of-state business that is conducted in this state pursuant to this article shall not be treated as occurring in this state with respect to any filing requirements for such tax including the filing required for a unitary or combined group of which the out-of-state business may be a part. Also, for the purposes of apportioning income, revenue, or receipts the performance by an out-of-state business of any disaster or emergency related work shall not be sourced to or shall not otherwise impact or increase the amount of income, revenue, or receipts apportioned to this state.

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

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

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

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

2. A registered business in the state shall, upon request, provide the information required in subdivision one of this section for any affiliate that enters the state that is an out-of-state business. The notification shall also include contact information for the registered business in the state.

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

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

§ 3108. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly

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

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