STATE OF NEW YORK

5054

2021-2022 Regular Sessions

IN ASSEMBLY

February 10, 2021

Introduced by M. of A. STERN -- read once and referred to the Committee on Ways and Means

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 the COVID-19 state of emergency

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

WELCOME HEROES TAX RELIEF ACT

Section 3100. Short title.
3101. Definitions.
3102. Business and employee status during COVID-19 period.
3103. Transaction taxes and fees.
3104. Business or employee activity after COVID-19 period.
3105. Notification of out-of-state business during COVID-19 period.
3106. Notification of intent to remain in state.
3107. Severability.

§ 3100. Short title. This article shall be known and may be cited as the "Welcome Heroes Tax Relief Act of 2021".

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

1. "Registered business in the state" (or "registered business") means a business entity that is currently registered to do business in this state prior to the declared COVID-19 state emergency.

2. "Out-of-state business" means a business entity that has no presence in this state and conducts no business in this state, whose

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

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services are only sought, obtained or requested by a registered business or by this state or a local government for purposes of performing COVID-19 emergency related work or services in this state. Out-of-state business shall also include a business entity that is affiliated with a registered business in this state solely through common ownership. The out-of-state business has no registrations or tax filings or nexus in this state prior to the declared COVID-19 emergency.

3. "Out-of-state employee" means an employee who does not work in this state, except for COVID-19 emergency related work or services during the COVID-19 period and is only present in this state during the COVID-19 period to provide the COVID-19 emergency related work or services.

4. "Commissioner" means commissioner of the department of taxation and finance.

5. "Declared COVID-19 state emergency" means the state of emergency declared by Governor Andrew Cuomo on March seventh, two thousand twenty in response to the outbreak of the novel coronavirus, COVID-19 in New York State.

6. "COVID-19 period" means the period beginning March seventh, two thousand twenty and ending on June thirtieth, two thousand twenty or for any longer period authorized by the commissioner.

7. "COVID-19 emergency related work or services" means providing the management, treatment, transfer, care, and/or cure of individuals suffering from novel coronavirus, COVID-19, and includes work and services supporting the management, treatment, transfer and/or care of such individuals suffering from novel coronavirus, COVID-19.

§ 3102. Business and employee status during COVID-19 period. 1. An out-of-state business that conducts operations within this state for purposes of performing COVID-19 emergency related work or services during the COVID-19 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 used or consumed during the COVID-19 period. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business that is conducted in this state pursuant to this article shall be disregarded 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.

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 this 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.

§ 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 and compensating use taxes on materials or services subject to sales and compensating use taxes, 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 this state during the COVID-19 period, unless such taxes are otherwise exempted during the COVID-19 period.

§ 3104. Business or employee activity after COVID-19 period. Any out-of-state business or out-of-state employee that remains in this state after the COVID-19 period will become subject to this 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 COVID-19 period. 1. The out-of-state business that enters this state shall, upon request, provide the department with a statement that it is in this state for purposes of responding to declared COVID-19 state of 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 this state shall, upon request, provide the information required in subdivision one of this section for any affiliate that enters this state that is an out-of-state business. The notification shall also include contact information for the registered business in this state.

§ 3106. Notification of intent to remain in state. An out-of-state business or an out-of-state employee that remains in this state after the COVID-19 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 this state applicable under the existing rules.

§ 3107. 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 and shall be deemed to have been in full force and effect on and after March 7, 2020; provided, however, the commissioner 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.