

CHAPTER 119
FORMERLY
HOUSE BILL NO. 145
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO STATE TAXES.

WHEREAS, during times of storm, flood, fire, earthquake, hurricane, or other disaster or emergency, many businesses bring in resources and personnel from outside this State on a temporary basis to expedite the often enormous and overwhelming task of maintaining, repairing and restoring critical communications, utility and public transportation infrastructure; and

WHEREAS, this often involves the need for out-of-State businesses, including out-of-State affiliates of businesses based in this State, to bring in resources, property or personnel that previously have had no connection to this State; and

WHEREAS, businesses and individual employees working in this State on a temporary basis solely for purposes of helping this State recover from a disaster or emergency should not be burdened by any requirements for business and employee taxes which may result from activities in this State for such temporary period; and

WHEREAS, this State's nexus and residency thresholds are intended for businesses and individuals in this State as part of the conduct of regular business operations or who intend to reside in this State and should not be directed at businesses and individuals coming into this State on a temporary basis to provide help and assistance in response to a State of Emergency; and

WHEREAS, to ensure that businesses may focus on quick response to the critical infrastructure needs of this State and its citizens during a State of Emergency, the General Assembly finds it appropriate to deem that emergency-related work occurring for a reasonable period of time before, during, and after an Emergency shall not constitute a legal presence, residency, or doing business in this State, or any other criteria for purposes of State and local taxes, licensing and regulatory requirements.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Title 30 of the Delaware Code to add Chapter 31 by making the insertions shown by underlining as follows:

CHAPTER 31. DELAWARE INFRASTRUCTURE EMERGENCY RESPONSE ACT.

§3101. Definitions.

As used in this chapter:

(a) "Declared State of Emergency" means a disaster or emergency event

a. for which a Governor's State of Emergency Proclamation has been issued; or

b. for which a Presidential Declaration of a Federal Major Disaster or Emergency has been issued.

(b) "Emergency Period" means a period that begins within 5 days of the first day of a Declared State of Emergency and that extends for a period of 60 calendar days after the end of such Declared State of Emergency, unless a longer period is authorized as provided herein.

(c) "Emergency Related Work" means repairing, renovating, installing, building, rendering services or other business activities relating to Infrastructure that may be or has been damaged, impaired or destroyed during the Emergency Period.

(d) "Infrastructure" means property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines, and public roads and bridges and related support facilities directly in connection with the provision of services to multiple customers or citizens, including, without limitation, real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment. The term "Infrastructure" shall not include any real or personal property that is not directly engaged in providing the applicable services to the citizens of this State, including, without limitation, office buildings or billing or administrative offices.

(e) “Out-of-State Business” means a business entity licensed in another State, commonwealth or district that has no registrations, tax filings, nexus or presence in this State and conducted no business in this State prior to a Declared State of Emergency and whose services are requested by a Registered Business or by a State or local government for purposes of performing Emergency Related Work. This includes a business entity that is affiliated with a Registered Business solely through common ownership.

(f) “Out-of-State Employee” means an employee who does not work in this State, except for “emergency-related work” during an “Emergency Period”.

(g) “Registered Business in this State” (or “Registered Business”) means a business entity that is or should legally be currently registered to do business in this State prior to a Declared State of Emergency.

(h) “State or Local Taxes” means State and local taxes or fees including, without limitation, unemployment insurance, State or local licensing fees, sales and use tax and ad valorem tax on equipment brought into this State solely to be used or consumed during the Emergency 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 by an Out-of-State Business conducted in this State pursuant to this Act shall be disregarded in determining the applicability of any filing requirements for such tax.

(i) “State Licensing or Registration Requirements” means all State or local business licensing or registration requirements, including, without limitation, registration or licensing by the Public Service Commission, the Secretary of State, the Division of Revenue, and any other State or local agency that requires businesses be licensed to operate within this State or imposes other regulatory requirements.

§3102. Business and Employee Status During Emergency Period.

(a) (1) An Out-of-State Business that conducts Emergency Related Work within this State related to a Declared State of Emergency at the request of a Delaware business licensed pursuant to this Title shall, during the Emergency Period, not be considered to have established a level of presence that would require such business or its Out-of-State Employees to: (i) register, file or remit State or Local Taxes, or (ii) be subject to any State Licensing or Registration Requirements.

(2) An Out-of-State Employee shall not be considered to have established residency or a presence in this State that would require such person to file and pay income taxes or such person’s employer to: (i) be subjected to tax withholdings; or (ii) file and pay any other State or Local Taxes during an Emergency Period. This includes any related State or local employer withholding and remittance obligations.

(b) Notwithstanding the provisions of subsection (a), Out-of-State Businesses and Out-of-State Employees shall be required to pay transaction taxes and fees, including without limitation, fuel taxes or sales and use taxes on materials or services subject to sales and use tax, hotel taxes, and car rental taxes or fees that an Out-of-State Business or Out-of-State Employee purchases or rents for use or consumption in this State during the Emergency Period, unless such taxes are otherwise exempted during a Declared State of Emergency, and nothing herein shall be deemed to grant an exemption for any of the foregoing taxes to such Out-of-State Businesses or Out-of-State Employees.

§3103. Business and Employee Status After Emergency Period.

An Out-of-State Business or an Out-of-State Employee that remains in this State after the Emergency Period shall be subject to this State’s normal standards for establishing presence, residency or for doing business in this State and be responsible for any otherwise applicable business or employee tax requirements.

§3104. Administration and Notification.

(a) (1) An Out-of-State Business that enters this State during an Emergency Period shall, upon request, provide the Delaware Division of Revenue, a written statement that such business is in this State for purposes of performing Emergency Related Work and which statement shall include the name of the business, State of domicile, principal business address, federal tax identification number, date of entry, and contact information.

(2) A Registered Business shall, upon request, provide the information required in paragraph 1 of this subsection for any affiliate that enters this State that is an Out-of-State Business. Such notification shall also include contact information for the Registered Business in this State.

(b) An Out-of-State Business or an Out-of-State Employee that remains in this State after the Emergency Period shall complete all State and local registration, licensing and filing requirements that apply as a result of establishing the requisite business presence or residency in this State applicable under existing rules.

§3105. Regulations.

The Delaware Division of Revenue shall promulgate regulations and develop and maintain forms and records necessary to implement and administer the provisions of this Act.

Section 2. The provisions of this Act shall take effect upon enactment.

Approved July 16, 2013