

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-187
SENATE BILL 498

AN ACT TO FACILITATE RAPID RESPONSE TO STATE DECLARED DISASTERS BY
EXEMPTING CERTAIN BUSINESSES AND EMPLOYEES FROM REGISTRATION
AND TAX LAWS DURING THE DISASTER RESPONSE PERIOD.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 8 of Article 1A of Chapter 166A of the General Statutes is amended by adding a new section to read:

"§ 166A-19.70A. Facilitate critical infrastructure disaster relief.

(a) Purpose. – The State finds that it is appropriate to exclude nonresident businesses and nonresident employees who temporarily come to this State at the request of a critical infrastructure company solely to perform disaster-related work during a disaster response period from the following tax and regulatory requirements:

- (1) Corporate and individual income tax, as provided under G.S. 105-130.1 and G.S. 105-153.2.
- (2) Franchise tax, as provided under G.S. 105-114.
- (3) Unemployment tax, as provided under G.S. 96-1(b)(12).
- (4) Certificate of Authority from the Secretary of State to transact business in this State, as provided under G.S. 55-15-01(d) and G.S. 57D-1-24(d).

(b) Definitions. – In addition to the definitions in G.S. 166A-19.3, the following definitions apply in this section:

- (1) Corporation. – Defined in G.S. 105-130.2.
- (2) Critical infrastructure. – Property and equipment owned or used by a critical infrastructure company for utility or communications transmission services provided to the public in the State. Examples of critical infrastructure include communications networks, electric generation, transmission and distribution systems, natural gas transmission and distribution systems, water pipelines, and related support facilities. Related support facilities may include buildings, offices, lines, poles, pipes, structures, and equipment.
- (3) Critical infrastructure company. – One of the following:
 - a. A registered public communications provider.
 - b. A registered public utility.
- (4) Disaster-related work. – Repairing, renovating, installing, building, or performing services on critical infrastructure that has been damaged, impaired, or destroyed as a result of a disaster or emergency in an area covered by the disaster declaration.
- (5) Disaster response period. – A period that begins 10 days prior to the first day of a disaster declaration and expires on the earlier of the following:
 - a. Sixty days following the expiration of the disaster declaration, as provided under G.S. 166A-19.21(c).
 - b. One hundred eighty days following the issuance of the disaster declaration.



- (6) Employee. – Defined in G.S. 105-163.1.
- (7) Nonresident business. – An entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period, other than those arising from the performance of disaster-related work during a tax year prior to the enactment of this section, and that meets one or more of the following conditions:
 - a. Is a nonresident entity.
 - b. Is a nonresident individual who owns an unincorporated business as a sole proprietor.
- (8) Nonresident employee. – A nonresident individual who is one of the following:
 - a. An employee of a nonresident business.
 - b. An employee of a critical infrastructure company who is temporarily in this State to perform disaster-related work during a disaster response period.
- (9) Nonresident entity. – Defined in G.S. 105-163.1.
- (10) Nonresident individual. – Defined in G.S. 105-153.3.
- (11) Registered public communications provider. – A corporation doing business in this State prior to the disaster declaration that provides the transmission to the public of one or more of the following:
 - a. Broadband.
 - b. Mobile telecommunications.
 - c. Telecommunications.
 - d. Wireless Internet access.
- (12) Registered public utility. – A corporation doing business in this State prior to the disaster declaration that is subject to the control of one or more of the following entities:
 - a. North Carolina Utilities Commission.
 - b. North Carolina Rural Electrification Authority.
 - c. Federal Communications Commission.
 - d. Federal Energy Regulatory Commission.

(c) Critical Infrastructure Company Notification. – A critical infrastructure company must provide notification to the Department of Revenue within 90 days of the expiration of the disaster response period. The notification must be in the form and manner required by the Department. The notification must include the following:

- (1) A list of all nonresident businesses who performed disaster-related work in this State during a disaster response period at the request of the critical infrastructure company.
- (2) A list of nonresident employees who performed disaster-related work in this State for the critical infrastructure company during a disaster response period. The notification must include the amount of compensation paid to the nonresident employee performing disaster-related work in this State.

(d) Nonresident Business Notification. – A nonresident business must provide notification to the Department of Revenue within 90 days of the date the nonresident business concludes its disaster-related work in the State. The notification must be in the form and manner required by the Department. The notification must include a list of nonresident employees who performed disaster-related work in this State during a disaster response period, along with the amount of compensation paid to the nonresident employee performing disaster-related work in this State. Failure to submit a timely notification forfeits the relief provided by this section for the nonresident business.

(e) Limitation. – The intent of this section is to provide relief to nonresident businesses and nonresident employees who would not otherwise be subject to this State's tax and regulatory requirements if they had not performed disaster-related work during the disaster response period. The relief provided under this section does not apply to any tax year that is part of the disaster response period if the nonresident business or nonresident employee continues to perform disaster-related work following the end of the disaster response period. The relief provided under this section does not apply to a tax year that is part of the disaster response period if the nonresident business or nonresident employee is required to file an income tax return for that tax year with the Department of Revenue for reasons other than the performance of disaster-related work."

SECTION 1.(b) G.S. 55-15-01 is amended by adding a new subsection to read:

"(e) The following foreign corporations are not required to obtain a certificate of authority from the Secretary of State:

- (1) A nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision.
- (2) A person issued a temporary license by the Department of Revenue under G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration."

SECTION 1.(c) G.S. 57D-1-24 reads as rewritten:

"§ 57D-1-24. Certificate of existence; certificate of authorization.

...
(d) A nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not required to obtain a certificate of authority from the Secretary of State. The definitions and provisions of G.S. 166A-19.70A apply to this subsection."

SECTION 1.(d) G.S. 96-1(b)(12) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Chapter:

...
(12) Employment. – Defined in section 3306 of the Code, with the following additions and exclusions:

...
b. Exclusions. – The term excludes all of the following:

5. Service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this exclusion."

SECTION 1.(e) G.S. 105-114 is amended by adding a new subsection to read:

"(d) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State for purposes of this Article. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

SECTION 1.(f) G.S. 105-130.1 reads as rewritten:

"§ 105-130.1. Purpose.

(a) Purpose. – The general purpose of this Part is to impose a tax for the use of the State government upon the net income of every domestic corporation and of every foreign corporation doing business in this State.

The tax imposed upon the net income of corporations in this Part is in addition to all other taxes imposed under this Subchapter.

(b) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State for purposes of this Part. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

SECTION 1.(g) G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(30) Payments made to an affiliate or subsidiary that is not subject to tax under this Article pursuant to the exceptions for critical infrastructure disaster relief provided under G.S. 166A-19.70A, to the extent the payments are deducted in determining federal taxable income. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision."

SECTION 1.(h) G.S. 105-131.7 reads as rewritten:

"§ 105-131.7. Returns; shareholder agreements; mandatory withholding.

...

(f) Critical Infrastructure Disaster Relief. – An S Corporation that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file a return with the Department. However, the corporation must furnish to each shareholder who would be entitled to share in the corporation income any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A concerning disaster-related work apply to this subsection."

SECTION 1.(i) G.S. 105-154(c) reads as rewritten:

"§ 105-154. Information at the source returns.

...

(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, each partner's distributive share of the partnership's income, and the adjustments required by this Part. A partner's distributive share of partnership net income includes any guaranteed payments made to the partner. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall be signed by one of the partners under affirmation in the form required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

A partnership that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. However, the partnership must furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A apply to this paragraph."

SECTION 1.(j) G.S. 105-153.2 reads as rewritten:

"§ 105-153.2. Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

- (1) Of every resident of this State.
- (2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State. This subdivision does not apply to a nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions in G.S. 166A-19.70A apply to this subdivision.

SECTION 1.(k) G.S. 105-153.8(a) reads as rewritten:

"(a) Who Must File. – The following individuals must file with the Secretary an income tax return under affirmation:

- (1) Every resident who for the taxable year has gross income under the Code that exceeds the standard deduction amount provided in G.S. 105-153.5(a)(1).
- (2) Every nonresident individual who meets all of the following requirements:
 - a. Receives during the taxable year gross income that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State. This sub-subdivision does not apply to a nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions in G.S. 166A-19.70A apply to this sub-subdivision.
 - b. Has gross income under the Code that exceeds the applicable standard deduction amount provided in G.S. 105-153.5(a)(1).
- (3) Any individual whom the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return."

SECTION 1.(l) G.S. 105-163.1(13) reads as rewritten:

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

- ...
- (13) Wages. – The term has the same meaning as in section 3401 of the ~~Code~~. Code, except the term does not include amounts paid to a nonresident employee for a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision.
-"

SECTION 1.(m) G.S. 105-163.3(b) reads as rewritten:

"(b) Exemptions. – The withholding requirement does not apply to the following:

...

- (5) Compensation paid by a nonresident business or a critical infrastructure company to an ITIN contractor who is a nonresident individual for a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision."

SECTION 1.(n) G.S. 105-163.7(b) reads as rewritten:

"(b) Informational Return to Secretary. – Every employer shall annually file an informational return with the Secretary that contains the information given on each of the employer's written statements to an employee. The Secretary may require additional information to be included on the informational return, provided the Secretary has given a minimum of 90 days' notice of the additional information required. The informational return is due on or before January 31 of the succeeding year and must be filed in an electronic format as prescribed by the Secretary. If the employer terminates its business or permanently ceases paying wages during the calendar year, the informational return must be filed within 30 days of the last payment of remuneration. The informational return required by this subsection is in lieu of the report required by G.S. 105-154.

An employer that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. However, the employer must furnish to an employee, upon request, any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A apply to this paragraph."

SECTION 2. Part 2 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.69A. Temporary license during disaster response period.

(a) Temporary License. – The Secretary may grant a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration. The term "disaster declaration" has the same meaning as defined in G.S. 166A-19.3. The temporary license expires upon the expiration of the disaster declaration. A temporary license issued under this section may not be renewed or a new temporary license granted if the licensee failed to file the required returns or make payments of the required taxes.

(b) Requirements. – To obtain a temporary license, a person must file an application with the Secretary on a form prescribed by the Secretary within seven calendar days from the date of the disaster declaration. An application must include all of the following information:

- (1) The legal name of the business and the trade name, if applicable, under which the person will transact business within the State.
- (2) The federal identification number of the business or, if such number is unavailable, the Social Security number of the owner.
- (3) The location, with a street number address, of the principal office or place of business and the location where records will be made available for inspection.
- (4) Any other information required by the Secretary.

(c) Exceptions. – The Secretary may issue a temporary license under this section as an importer, exporter, distributor, or transporter without requiring the applicant to file with the Secretary a bond or an irrevocable letter of credit, as otherwise required by G.S. 105-449.72, and without requiring the applicant to be authorized to transact business in this State with the Secretary of State."

SECTION 3. This act is effective when it becomes law and applies to disaster declarations on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2019.

s/ Ralph E. Hise
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:27 p.m. this 1st day of August, 2019