COMMITTEE REPORT

March 5, 2014

**S. 1033**

Introduced by Senators Campbell, Leatherman, Setzler and O’Dell

S. Printed 3/5/14--S.

Read the first time February 19, 2014.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 1033) to amend Chapter 2, Title 12 of the 1976 Code relating to taxation, by adding Section 12‑2‑110, to provide an out‑of‑state business, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill codifies existing legislative directives contained in Appropriation Act proviso 106.10. Therefore, we expect this bill would have no revenue impact.

**Explanation**

This bill exempts out-of-state businesses that perform work services related to a declared state disaster or emergency from filing or remitting state or local taxes. An out-of-state business is defined as providing disaster or emergency related services when its presence is requested by a registered business in South Carolina or a state or local government. The out-of-state business, additionally, must have no presence or conduct no business in South Carolina except when requested in a disaster or emergency.

The out-of-state business meeting these requirements is exempt from all local business licensing or registration requirements or state and local taxes or fees including but not limited to unemployment insurance, state or local occupational licensing fees, sales or use tax, and property tax on equipment used or consumed during the disaster period. Out-of-state businesses performing emergency or disaster related work are not considered to have established residency or a presence that would require the business to file income or withholding taxes. The disaster period is defined as beginning within 10 days of the first declaration and extends for sixty days after the end of the declared disaster or emergency. Out-of-state businesses and employees are not exempt from transactions fees or taxes such as motor fuel user fees, accommodations taxes, car rental fees, or sales and use tax.

This bill codifies existing legislative directives contained in Appropriation Act proviso 106.10. Therefore, we expect this bill would have no revenue impact.

*Approved By:*

Frank A. Rainwater

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND CHAPTER 2, TITLE 12 OF THE 1976 CODE RELATING TO TAXATION, BY ADDING SECTION 12‑2‑110, TO PROVIDE AN OUT‑OF‑STATE BUSINESS THAT CONDUCTS OPERATIONS WITHIN THIS STATE FOR THE PURPOSES OF PERFORMING WORK OR SERVICES RELATED TO A DECLARED STATE DISASTER OR EMERGENCY DURING A DISASTER PERIOD MUST NOT BE CONSIDERED TO HAVE ESTABLISHED A LEVEL OF PRESENCE THAT WOULD REQUIRE THAT BUSINESS TO REGISTER, FILE, AND 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 OR ANY COMBINATION OF THESE ACTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 2, Title 12 of the 1976 Code is amended by adding:

“Section 12‑2‑110. (A) For purposes of this section:

(1) ‘Registered business in this State’ or ‘registered business’ means a business entity that is registered to do business in this State before 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 this 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 this State. This term includes a business entity that is affiliated with the registered business in this State solely through common ownership. The out‑of‑state business must have no registrations or tax filings or nexus in the State before the declared state disaster or emergency.

(3) ‘Out‑of‑state employee’ means an employee who does not reside in or work in the State, except for disaster or emergency related work during the disaster period.

(4) ‘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 that services 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 a Governor’s state of emergency proclamation has been issued;

(b) for which a presidential declaration of a federal major disaster or emergency has been issued; or

(c) other disaster or emergency event within this State for which a good faith response effort is required, and for which the Director of the South Carolina Department of Revenue designates the event as a disaster or emergency and thereby invokes this section.

(6) ‘Disaster period’ means a period that begins within ten days of the first day of the Governor’s proclamation, the President’s declaration or designation by the Director of the Department of Revenue, whichever occurs first, and that extends for a period of sixty calendar days after the end of the declared disaster or emergency period, or any longer period authorized by the designated state official or agency.

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

(B)(1)(a) An out‑of‑state business that conducts operations within this State for the purposes of performing work or services related to a declared state disaster or emergency during a disaster period must not be considered to have established a level of presence that would require that business to register, file, and 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 or any combination of these actions. Except as provided in subsection (B)(1)(b), this exemption includes all state or local business licensing or registration requirements or state and local taxes or fees including, but not limited to, unemployment insurance, state or local occupational licensing fees, sales and use tax, or property tax on equipment used or consumed during the disaster period, and includes South Carolina Public Service Commission and Secretary of State licensing and regulatory requirements. For purposes of a 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 section must be disregarded with respect to any filing requirements for that tax including the filing required for a unitary or combined group of which the out‑of‑state business may be a part.

(b) An out‑of‑state employee is not 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.

(2) Out‑of‑state businesses and out‑of‑state employees are not exempted by this section from transaction taxes and fees including, but not limited to, fuel taxes and fuel user fees or sales and use taxes on materials or services subject to sales and use tax, accommodations 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 disaster period, unless the taxes or fees are otherwise exempted during a disaster period.

(3) An out‑of‑state business or out‑of‑state employee that remains in the State after the disaster period becomes subject to the state’s normal standards for establishing presence, residency or doing business in this State and the resulting requirements.

(C)(1)(a) The out‑of‑state business that enters this State upon request, shall provide to the Department of Revenue a notification statement that it is in this State for purposes of responding to the disaster or emergency, which statement must include the business’ name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

(b) A registered business in this State, upon request, shall provide the information required in item (1)(a) of this subsection for an affiliate that enters this State that is an out‑of‑state business. The notification also must include contact information for the registered business in this State.

(2) An out‑of‑state business or an out‑of‑state employee that remains in this State after the disaster period shall notify the Department of Revenue and shall comply with state and local registration, licensing, and filing requirements that ensue as a result of establishing the requisite business presence or residency in this State.”

SECTION 2. This act takes effect upon approval by the Governor.

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