

(CORRECTED COPY)

CHAPTER 7

AN ACT excluding certain out-of-State businesses and employees restoring critical infrastructure from certain taxes, fees, and business registration requirements when temporarily performing work or services in this State during a declared disaster or emergency and supplementing chapter 50 of Title 54 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.54:50-40 Definitions regarding certain tax, fee, and business registration requirement exclusions.

1. As used in P.L.2019, c.7 (C.54:50-40 et seq.):

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

“Declared disaster or emergency” means a disaster or emergency event for which a Governor’s State of Emergency Proclamation is issued or for which a Presidential Declaration of a Major Disaster or Emergency is issued;

“Director” means the Director of the Division of Taxation in the Department of the Treasury;

“Disaster or emergency related work” means repairing, renovating, installing, building, rendering services, or other business activities that relate to critical infrastructure damaged, impaired, or destroyed by the declared disaster or emergency;

“Disaster period” means a period beginning 10 days before the first day of the Governor’s proclamation or the President’s declaration, whichever occurs first, and ending 60 days after the end of the declared disaster or emergency period;

”Home state” means the state, or other jurisdiction, in which an out-of-State business maintains its principal place of business or, in the case of an out-of-State employee, the principal location where the employee engages in his or her professional practice;

“Out-of-State business” means a business entity that does not have a physical presence in this State and does not otherwise engage in business activity or do business in this State, but whose services are requested by a business that is registered to do business in this State or by a State or local government for purposes of performing disaster or emergency related work in this State, provided that an out-of-State business also includes a business entity that is affiliated with the business that is registered to do business in this State solely through common ownership and provided further that the out-of-State business does not have a physical presence in this State, does not engage in activities in this State, is not doing business in this State, and does not have registration or tax filing obligations, other than being included in a combined return as a non-taxable member pursuant to section 18 of P.L.2018, c.48 (C.54:10A-4.6), in this State prior to the declared disaster or emergency; and

“Out-of-State employee” means an employee who does not work in this State, except for disaster or emergency related work on critical infrastructure during the disaster period.

C.54:50-41 Out-of-State businesses and employees performing disaster or emergency related work; taxation, registration, licensing.

2. a. An out-of-State business that conducts operations within this State for purposes of performing disaster or emergency related work during the disaster period shall not be

considered to have established a level of physical presence or engaged in business activities at a level that is sufficient to require that out-of-State business to:

(1) register, file, and report and pay State or local taxes or fees that require the filing of a New Jersey tax return, including but not limited to employer withholding and unemployment insurance; or

(2) require that out-of-State business, or its out-of-State employees, to be subject to any State or local licensing or registration requirements, including but not limited to all State and local business licensing and registration requirements; provided, however, that the out-of-State business, or its out-of-State employees, shall be duly licensed, or otherwise legally authorized to engage in the activity, in the applicable home state.

For purposes of this section: for any exempted State or local tax imposed on or measured by net or gross income or receipts, all activity of the out-of-State business conducted in this State related to the declared disaster or emergency, in accordance with P.L.2019, c.7 (C.54:50-40 et seq.), shall be disregarded for 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 shall not be considered to have established residency or a physical presence or engaged in business activities in this State that are sufficient to require that out-of-State employee or that out-of-State employee's employer to report and pay State or local income taxes that require the filing of a New Jersey tax return, or to report and pay any other State or local tax or fee that requires the filing of a New Jersey tax return, during the disaster period. This includes any related employer withholding and reporting and payment obligations imposed by the State or a local government.

C.54:50-42 Payment of State and local transaction taxes, fees; exception.

3. An out-of-State business or out-of-State employee shall be required to pay State and local transaction taxes and fees including, but not limited to, fuel taxes, sales and use taxes on receipts from sales of goods and services subject to sales and use taxes, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees that the out-of-State business or the out-of-State employee purchases for use or consumption in this State during the disaster period, unless those transactions are otherwise exempt, excluded, or not subject to a State or local tax or fee during the disaster period.

C.54:50-43 Out-of-State business and employees remaining after disaster period; taxes.

4. An out-of-State business or out-of-State employee remaining in this State after the disaster period shall be subject to the State's normal standards for establishing physical presence or residency, engaging in business activity, and doing business in this State, and shall be responsible for any ensuing State or local tax liabilities or requirements of the business or an employee of the business.

C.54:50-44 Written statement of out-of-State business.

5. a. An out-of-State business that enters this State shall, not later than 45 days after the date the out-of-State business enters this State, provide a written statement to the director indicating that the out-of-State business is doing business in this State for purposes of performing disaster or emergency related work, which written statement shall include the name of the business, the state of the business's domicile, the principal address of the business, the business's federal tax identification number, the date of the business's entry into this State, and the business's contact information.

b. A business that is registered to do business in this State shall provide a written statement that includes the information required to be provided to the director in accordance with subsection a. of this section for each out-of-State business affiliate that enters this State for purposes of performing disaster or emergency related work. The written notification provided to the director also shall include contact information for the business that is registered to do business in this State, and shall be provided to the director by the business that is registered to do business in this State not later than 30 days after the date the out-of-State business enters this State.

c. The written statement and any information required to be provided to the director by an out-of-State business or by a business that is registered to do business in this State, on behalf of an affiliate, shall be a public or government record for purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), and shall be open to the public for inspection. The written statement and any information required to be provided to the director shall not be a confidential or privileged record or file of the director subject to the provisions of R.S.54:50-8 and R.S.54:50-9.

C.54:50-45 Compliance with registration, licensing, and filing requirements.

6. An out-of-State business or an out-of-State employee that maintains a physical presence in this State or engages in business activity in this State after the disaster period shall comply with all State and local business registration requirements and all licensing and filing requirements ensuing as a result of establishing the required business presence or residency in this State.

C.54:50-46 Rules, regulations.

7. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the director determines to be necessary and appropriate to effectuate the purposes of P.L.2019, c.7 (C.54:50-40 et seq.), which rules and regulations shall be effective for a period not to exceed 360 days following the effective date of P.L.2019, c.7 (C.54:50-40 et seq.) and may thereafter be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

8. This act shall take effect immediately.

Approved January 31, 2019.