

State of Wisconsin



2015 Assembly Bill 405

Date of enactment: **November 11, 2015**

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2015 WISCONSIN ACT 84

AN ACT *to renumber* 71.23 (3); *to renumber and amend* 71.67 (6), 77.52 (7) and 77.53 (9); *to amend* 71.03 (2) (a) 2., 77.52 (12) and 323.12 (title); and *to create* 71.04 (7) (f) 17., 71.05 (1) (g), 71.23 (3) (bm), 71.25 (9) (f) 17., 71.25 (16), 71.26 (2) (a) 12., 71.64 (6) (c), 71.67 (6) (b), 77.52 (7) (b), 77.53 (9) (b), 77.53 (19) and 323.12 (5) of the statutes; **relating to:** exemptions from certain taxes and other requirements for work performed by persons from outside the state during a state of emergency declared by the governor.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.03 (2) (a) 2. of the statutes is amended to read:

71.03 (2) (a) 2. Every nonresident person and every person who changes domicile into or out of this state during the taxable year shall file a return if the person is unmarried and has gross income of \$2,000 or more, or if the person is married and the combined gross income of the person and his or her spouse is \$2,000 or more, except that a return is not required to be filed if all the income is exempt from income tax under s. 71.05 (1) (g).

SECTION 2. 71.04 (7) (f) 17. of the statutes is created to read:

71.04 (7) (f) 17. Gross receipts from sales of property or services as part of performing disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 3. 71.05 (1) (g) of the statutes is created to read:

71.05 (1) (g) *Income from work performed during a declared state of emergency.* Income of an out-of-state business, as defined in s. 323.12 (5) (a) 6., and an out-of-state employee, as defined in s. 323.12 (5) (a) 7., from disaster relief work, as defined under s. 323.12 (5) (a) 3.

SECTION 4. 71.23 (3) of the statutes is renumbered 71.23 (3) (am).

SECTION 5. 71.23 (3) (bm) of the statutes is created to read:

71.23 (3) (bm) Except as provided in s. 71.255 (5), an out-of-state business, as defined in s. 323.12 (5) (a) 6., may do business in this state without subjecting itself to the imposition of the income or franchise tax under subs. (1) and (2) if its only activity in this state is disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 6. 71.25 (9) (f) 17. of the statutes is created to read:

71.25 (9) (f) 17. Gross receipts from sales of property or services as part of performing disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 7. 71.25 (16) of the statutes is created to read:

71.25 (16) **DISASTER RELIEF WORK.** For purposes of the apportionment of any income under this section, the disaster relief work, as defined in s. 323.12 (5) (a) 3., of an out-of-state business, as defined in s. 323.12 (5) (a) 6., shall not increase the amount of income apportioned to this state. For purposes of sub. (7), any property brought temporarily into this state by an out-of-state business in connection with performing disaster relief

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

work is not considered property located in this state. For purposes of sub. (8), compensation paid to out-of-state employees, as defined in s. 323.12 (5) (a) 7., who are performing disaster relief work is not considered compensation paid in this state. For purposes of sub. (9), gross receipts from the sale of property or services as part of performing any disaster relief work are not considered gross receipts from sales received in this state.

SECTION 8. 71.26 (2) (a) 12. of the statutes is created to read:

71.26 (2) (a) 12. Minus the income of an out-of-state business, as defined in s. 323.12 (5) (a) 6., from disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 9. 71.64 (6) (c) of the statutes is created to read:

71.64 (6) (c) No amount shall be withheld from wages paid to an out-of-state employee, as defined in s. 323.12 (5) (a) 7., for disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 10. 71.67 (6) of the statutes is renumbered 71.67 (6) (a) and amended to read:

71.67 (6) (a) Each Except as provided under par. (b), each employer who is required to withhold under this chapter shall obtain a valid certificate under s. 73.03 (50).

SECTION 11. 71.67 (6) (b) of the statutes is created to read:

71.67 (6) (b) An out-of-state business, as defined in s. 323.12 (5) (a) 6., whose only payments to employees are to out-of-state employees, as defined in s. 323.12 (5) (a) 7., for disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to obtain a certificate under s. 73.03 (50).

SECTION 12. 77.52 (7) of the statutes is renumbered 77.52 (7) (a) and amended to read:

77.52 (7) (a) Every Except as provided in par. (b), every person desiring to operate as a seller within this state who holds a valid certificate under s. 73.03 (50) shall file with the department an application for a permit for each place of operations. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant's place of operations, and the other information that the department requires. Except as provided in sub. (7b), the application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers. A nonprofit organization that has a sales price taxable under s. 77.54 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable sales prices received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

SECTION 13. 77.52 (7) (b) of the statutes is created to read:

77.52 (7) (b) An out-of-state business, as defined in s. 323.12 (5) (a) 6., performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to register with the department under par. (a) and is not required to obtain a certificate under s. 73.03 (50) for sales made during a disaster period, as defined in s. 323.12 (5) (a) 2.

SECTION 14. 77.52 (12) of the statutes is amended to read:

77.52 (12) A person who operates as a seller in this state without a permit or after a permit has been suspended or revoked or has expired, unless the person is not required to obtain a permit as provided under sub. (7) (b) or unless the person has a temporary permit under sub. (11), and each officer of any corporation, partnership member, limited liability company member, or other person authorized to act on behalf of a seller who so operates, is guilty of a misdemeanor. Except for a person who is registered in accordance with the agreement, as defined in s. 77.65 (2) (a), permits shall be held only by persons actively operating as sellers of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable services. Any person not so operating shall forthwith surrender that person's permit to the department for cancellation. The department may revoke the permit of a person found not to be actively operating as a seller of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable services.

SECTION 15. 77.53 (9) of the statutes is renumbered 77.53 (9) (a) and amended to read:

77.53 (9) (a) Every Except as provided in par. (b), every retailer selling tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services for storage, use or other consumption in this state shall register with the department and obtain a certificate under s. 73.03 (50) and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, the standard industrial code classification of each place of business in this state and the other information that the department requires. Any person who may register under this subsection may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under this subsection, in the manner prescribed by the department.

SECTION 16. 77.53 (9) (b) of the statutes is created to read:

77.53 (9) (b) An out-of-state business, as defined in s. 323.12 (5) (a) 6., performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to register with the department under par. (a) and is not required to obtain a certificate under s. 73.03 (50) for sales made during the disaster period, as defined in s. 323.12 (5) (a) 2.

SECTION 17. 77.53 (19) of the statutes is created to read:

77.53 (19) This section does not apply to the storage, use, or other consumption in this state of tangible personal property, property, or goods under s. 77.52 (1) (a), (c), or (d), or taxable services, purchased outside this state, as determined under s. 77.522, by an out-of-state business, as defined in s. 323.12 (5) (a) 6., and brought into this state and used solely for disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 18. 323.12 (title) of the statutes is amended to read:

323.12 (title) Governor; duties and powers; out-of-state assistance.

SECTION 19. 323.12 (5) of the statutes is created to read:

323.12 (5) WORK PERFORMED BY AN OUT-OF-STATE BUSINESS OR EMPLOYEE. (a) In this subsection:

1. "Declared state of emergency" means a state of emergency declared by the governor under s. 323.10.

2. "Disaster period" means the time that begins 10 days before a declared state of emergency and ends 60 days after the declared state of emergency ends.

3. "Disaster relief work" means work, including repairing, renovating, installing, building, or performing other services or activities, relating to infrastructure in this state that has been damaged, impaired, or destroyed in connection with a declared state of emergency.

4. "Doing business in this state" has the meaning given in s. 71.22 (1r), except that members of a combined group, as defined in s. 71.255 (1) (a), are not considered to be doing business in this state based solely on another member of the combined group doing business in this state. A business shall be considered to be doing business in this state for purposes of ch. 77 if it performs disaster relief work in this state.

5. "Infrastructure" means property and equipment owned or used by a telecommunications provider or cable operator or that is used for communications networks, including telecommunications, broadband, and multichannel video networks; electric generation, transmission, and distribution systems; gas distribution systems; water pipelines; and any related support facilities that service multiple customers or citizens, including buildings, offices, lines, poles, pipes, structures, equipment, and other real or personal property.

6. "Out-of-state business" means a sole proprietorship, partnership, limited liability company, joint venture, corporation, or other organization or enterprise, whether operated for profit or not for profit, that is not organized under the laws of this state and that, except for disaster relief work during a disaster period, was not doing business in this state during the 3 taxable years immediately preceding the disaster period or the current

taxable year in which the declared state of emergency occurs.

7. "Out-of-state employee" means an individual who does not work in this state, except for disaster relief work during a disaster period, and who immediately prior to that declared state of emergency was not a resident of this state, was not doing business in this state that required a tax return to be filed in this state, and was not performing services in this state that required a tax return to be filed in this state.

8. "Taxable year" has the meaning given in s. 71.01 (12).

(b) Subject to par. (c), any out-of-state business or out-of-state employee is exempt from all of the following for disaster relief work performed during a disaster period:

1. Any applicable state withholding, income, franchise, or use tax, and any related registration requirement or fee, as provided under ss. 71.03 (2) (a) 2., 71.04 (7) (f) 17., 71.05 (1) (g), 71.23 (3) (bm), 71.25 (9) (f) 17. and (16), 71.26 (2) (a) 12., 71.64 (6) (c), 71.67 (6) (b), 77.52 (7) (b) and (12), and 77.53 (9) (b) and (19). The department of revenue may examine and inspect the books, records, memoranda, and property of any out-of-state business or out-of-state employee to verify an exemption claimed under this subdivision.

2. Any applicable fee imposed by a state agency, local unit of government, or other subdivision or instrumentality of the state or of a local unit of government.

3. Any applicable license, certificate, registration, permit, or other credential or approval of a state agency, local unit of government, or other subdivision or instrumentality of the state or of a local unit of government.

(c) No later than 90 days after the last day of a disaster period, any out-of-state business, and the employer of any out-of-state employee, that wishes to claim an exemption under par. (b) shall provide notice to the department of revenue, in the manner prescribed by the department, that the out-of-state business or out-of-state employee is in the state solely to perform disaster relief work. The notice shall include all of the following information for each out-of-state business and each out-of-state employee:

1. Legal name and business name, if any.

2. State of domicile or residence.

3. Principal address.

4. Federal tax identification number.

5. The date of entry to the state for the purpose of performing the disaster relief work.

6. Contact information.

(d) A business organized under the laws of this state shall provide the information required under par. (c) for any out-of-state business that is a related entity, as defined in s. 71.22 (9am), that enters the state to perform disaster relief.

SECTION 20. Initial applicability.

(1) DISASTER RELIEF WORK. The treatment of sections 71.03 (2) (a) 2., 71.04 (7) (f) 17., 71.05 (1) (g), 71.25 (9) (f) 17. and (16), 71.26 (2) (a) 12., and 71.64 (6) (c) of the statutes, the renumbering of section 71.23 (3) of the statutes, the renumbering and amendment of section 71.67 (6) of the statutes, and the creation of sections 71.23 (3) (bm) and 71.67 (6) (b) of the statutes first apply to taxable years beginning on January 1, 2015.

SECTION 21. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 77.52 (12) and 77.53 (19) of the statutes, the renumbering and amendment of sections 77.52 (7) and 77.53 (9) of the statutes, and the creation of sections 77.52 (7) (b) and 77.53 (9) (b) of the statutes take effect on the first day of the 3rd month beginning after publication.
