



2015 ASSEMBLY BILL 405

October 13, 2015 – Introduced by Representatives PETRYK, LOUDENBECK, ALLEN, BRANDTJEN, CZAJA, DOYLE, EDMING, GENRICH, KAHL, KITCHENS, KLEEFISCH, KRUG, MURPHY, MURSAU, NERISON, NOVAK, NYGREN, A. OTT, PETERSEN, RIPP, SARGENT, STEFFEN, STUCK, TRANEL, WEATHERSTON and ZEPNICK, cosponsored by Senators MARKLEIN, GUDEx, COWLES, SHILLING, L. TAYLOR, VINEHOUT and LASSA. Referred to Committee on Energy and Utilities.

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

Analysis by the Legislative Reference Bureau

This bill provides that a business or employee that is not a Wisconsin resident is exempt from certain licensing and other requirements for work performed in this state during a state of emergency declared by the governor. If a proper notice concerning the disaster relief work is given, such an out-of-state business or employee is exempt from all of the following with respect to the work:

1. Any applicable state or local government fee.
2. Any applicable state income, franchise, or withholding tax.
3. Any applicable state or local government license, certificate, registration, permit, or other credential or approval.
4. The use tax imposed on tangible personal property and services purchased outside of this state and brought into this state for disaster relief work.

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The exemptions are available only for the work that is performed during a state of emergency declared by the governor or within ten days before or 60 days after that state of emergency. Under current law, a state of emergency generally lasts up to 60 days, but the legislature may extend that period by joint resolution.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

9 71.04 (7) (f) 17. Gross receipts from sales of property or services as part of
10 performing disaster relief work, as defined in s. 323.12 (5) (a) 3.

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

12 71.05 (1) (g) *Income from work performed during a declared state of emergency.*
13 Income of an out-of-state business, as defined in s. 323.12 (5) (a) 6., and an
14 out-of-state employee, as defined in s. 323.12 (5) (a) 7., from disaster relief work, as
15 defined under s. 323.12 (5) (a) 3.

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

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

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

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

6 71.25 (9) (f) 17. Gross receipts from sales of property or services as part of
7 performing disaster relief work, as defined in s. 323.12 (5) (a) 3.

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

9 71.25 (16) DISASTER RELIEF WORK. For purposes of the apportionment of any
10 income under this section, the disaster relief work, as defined in s. 323.12 (5) (a) 3.,
11 of an out-of-state business, as defined in s. 323.12 (5) (a) 6., shall not increase the
12 amount of income apportioned to this state. For purposes of sub. (7), any property
13 brought temporarily into this state by an out-of-state business in connection with
14 performing disaster relief work is not considered property located in this state. For
15 purposes of sub. (8), compensation paid to out-of-state employees, as defined in s.
16 323.12 (5) (a) 7., who are performing disaster relief work is not considered
17 compensation paid in this state. For purposes of sub. (9), gross receipts from the sale
18 of property or services as part of performing any disaster relief work are not
19 considered gross receipts from sales received in this state.

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

21 71.26 (2) (a) 12. Minus the income of an out-of-state business, as defined in
22 s. 323.12 (5) (a) 6., from disaster relief work, as defined in s. 323.12 (5) (a) 3.

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

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1 71.64 (6) (c) No amount shall be withheld from wages paid to an out-of-state
2 employee, as defined in s. 323.12 (5) (a) 7., for disaster relief work, as defined in s.
3 323.12 (5) (a) 3.

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

6 71.67 (6) (a) ~~Each~~ Except as provided under par. (b), each employer who is
7 required to withhold under this chapter shall obtain a valid certificate under s. 73.03
8 (50).

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

10 71.67 (6) (b) An out-of-state business, as defined in s. 323.12 (5) (a) 6., whose
11 only payments to employees are to out-of-state employees, as defined in s. 323.12
12 (5) (a) 7., for disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to
13 obtain a certificate under s. 73.03 (50).

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

16 77.52 (7) (a) ~~Every~~ Except as provided in par. (b), every person desiring to
17 operate as a seller within this state who holds a valid certificate under s. 73.03 (50)
18 shall file with the department an application for a permit for each place of operations.
19 Every application for a permit shall be made upon a form prescribed by the
20 department and shall set forth the name under which the applicant intends to
21 operate, the location of the applicant's place of operations, and the other information
22 that the department requires. Except as provided in sub. (7b), the application shall
23 be signed by the owner if a sole proprietor; in the case of sellers other than sole
24 proprietors, the application shall be signed by the person authorized to act on behalf
25 of such sellers. A nonprofit organization that has a sales price taxable under s. 77.54

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1 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable
2 sales prices received after it is required to obtain that permit. If that organization
3 becomes eligible later for the exemption under s. 77.54 (7m) except for its possession
4 of a seller's permit, it may surrender that permit.

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

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

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

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

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

3 77.53 (9) (a) ~~Every~~ Except as provided in par. (b), every retailer selling tangible
4 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or
5 taxable services for storage, use or other consumption in this state shall register with
6 the department and obtain a certificate under s. 73.03 (50) and give the name and
7 address of all agents operating in this state, the location of all distribution or sales
8 houses or offices or other places of business in this state, the standard industrial code
9 classification of each place of business in this state and the other information that
10 the department requires. Any person who may register under this subsection may
11 designate an agent, as defined in s. 77.524 (1) (ag), to register with the department
12 under this subsection, in the manner prescribed by the department.

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

14 77.53 (9) (b) An out-of-state business, as defined in s. 323.12 (5) (a) 6.,
15 performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to
16 register with the department under par. (a) and is not required to obtain a certificate
17 under s. 73.03 (50) for sales made during the disaster period, as defined in s. 323.12
18 (5) (a) 2.

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

20 77.53 (19) This section does not apply to the storage, use, or other consumption
21 in this state of tangible personal property, property, or goods under s. 77.52 (1) (a),
22 (c), or (d), or taxable services, purchased outside this state, as determined under s.
23 77.522, by an out-of-state business, as defined in s. 323.12 (5) (a) 6., and brought into
24 this state and used solely for disaster relief work, as defined in s. 323.12 (5) (a) 3.

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

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1 **323.12 (title) Governor; duties and powers; out-of-state assistance.**

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

3 323.12 (5) WORK PERFORMED BY AN OUT-OF-STATE BUSINESS OR EMPLOYEE. (a) In
4 this subsection:

5 1. “Declared state of emergency” means a state of emergency declared by the
6 governor under s. 323.10.

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

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

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

19 5. “Infrastructure” means property and equipment owned or used by
20 communications networks; electric generation, transmission, and distribution
21 systems; gas distribution systems; water pipelines; and any related support facilities
22 that service multiple customers or citizens, including buildings, offices, lines, poles,
23 pipes, structures, equipment, and other real or personal property.

24 6. “Out-of-state business” means a sole proprietorship, partnership, limited
25 liability company, joint venture, corporation, or other organization or enterprise,

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1 whether operated for profit or not for profit, that is not organized under the laws of
2 this state and that, except for disaster relief work during a disaster period, was not
3 doing business in this state during the 3 taxable years immediately preceding the
4 disaster period or the current taxable year in which the declared state of emergency
5 occurs.

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

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

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

16 1. Any applicable state withholding, income, franchise, or use tax, and any
17 related registration requirement or fee, as provided under ss. 71.03 (2) (a) 2., 71.04
18 (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
19 (6) (c), 71.67 (6) (b), 77.52 (7) (b) and (12), and 77.53 (9) (b) and (19). The department
20 of revenue may examine and inspect the books, records, memoranda, and property
21 of any out-of-state business or out-of-state employee to verify an exemption
22 claimed under this subdivision.

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

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

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

- 11 1. Legal name and business name, if any.
- 12 2. State of domicile or residence.
- 13 3. Principal address.
- 14 4. Federal tax identification number.
- 15 5. The date of entry to the state for the purpose of performing the disaster relief
16 work.
- 17 6. Contact information.

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

SECTION 20. Initial applicability.

22 (1) DISASTER RELIEF WORK. The treatment of sections 71.03 (2) (a) 2., 71.04 (7)
23 (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
24 statutes, the renumbering of section 71.23 (3) of the statutes, the renumbering and
25 amendment of section 71.67 (6) of the statutes, and the creation of sections 71.23 (3)

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1 (bm) and 71.67 (6) (b) of the statutes first apply to taxable years beginning on
2 January 1, 2015.

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

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

9 (END)