

Regular Session, 2013

SENATE BILL NO. 177

BY SENATOR RISER

TAX/TAXATION. Creates the Rapid Response to Declared Disasters Income Tax Exclusion Act to exclude from gross income certain monies received for services rendered by nonresidents during a declared disaster or emergency. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:242 and 287.67(1)(g), (h), and (2) and to enact R.S. 47:53.5  
3 and 111(A)(11), relative to gross income; to exclude from gross income certain  
4 monies received by nonresident individuals and corporations for services rendered  
5 in response to a declared disaster or emergency; to provide for definitions; to provide  
6 for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. This Act shall be known as and may be cited as the "Rapid Response to  
9 Declared Disasters Income Tax Exclusion Act".

10 Section 2. R.S. 47:242 and 287.67(1)(g), (h), and (2) are hereby amended and  
11 reenacted and R.S. 47:53.5 and 111(A)(11) are hereby enacted to read as follows:

12 **§53.5. Exclusions from gross income tax; compensation for disaster services**

13 **A. Definitions. For purposes of this Section, the following terms shall**  
14 **have the following meanings:**

15 **(1) "Registered business in the state" means a business entity that is**  
16 **currently registered to do business in the state and was registered prior to a**  
17 **declared state of emergency.**

1           **(2)(a) "Nonresident business" means a business entity whose services are**  
2           **requested by a registered business in the state or by a state or local government**  
3           **for purposes of performing disaster or emergency related work in the state and**  
4           **that prior to the declared state of emergency:**

5                   **(i) Is not qualified or registered to do business in this state.**

6                   **(ii) Has no employees, agents or independent contractors in this state.**

7                   **(iii) Is not transacting business in this state.**

8                   **(iv) Has not filed and is not required to file any state or local tax return**  
9           **in this state.**

10           **(b) For purposes of this Paragraph, "nonresident business" shall include**  
11           **a business entity that is affiliated with a registered business in this state solely**  
12           **through common ownership.**

13           **(3) "Out-of-state employee" means a nonresident individual who does**  
14           **not provide services or activities in this state, except for disaster or emergency**  
15           **related work during a disaster period.**

16           **(4) "Infrastructure" means property and equipment owned or used by**  
17           **communications networks, electric generation, transmission and distribution**  
18           **systems, gas distribution systems, water pipelines, and public roads and bridges**  
19           **and related support facilities that services multiple customers or citizens**  
20           **including but not limited to real and personal property such as buildings,**  
21           **offices, lines, poles, pipes, structures and equipment.**

22           **(5) "Declared state disaster or emergency" means a disaster or**  
23           **emergency event declared by any of the following:**

24                   **(a) A disaster or emergency has been declared by executive order or**  
25                   **proclamation by the governor pursuant to Chapter 6 of Title 29 of the Louisiana**  
26                   **Revised Statutes of 1950.**

27                   **(b) A disaster or emergency for which a federal declaration of disaster**  
28                   **or emergency has been issued by the president.**

29                   **(c) An event within the state for which a good faith response is required**

1 and for which a registered business notifies the governor or appropriate local  
2 official of the event and the governor or local official declares a disaster or  
3 emergency under Chapter 6 of Title 29 of the Louisiana Revised Statutes of 1950.

4 (6) "Disaster period" means a period that begins within ten days of the  
5 first day of the governor's proclamation, the president's declaration or  
6 designation by any other authorized official of the state, as set forth in this  
7 Section, whichever occurs first, and that extends for a period of sixty calendar  
8 days after the end of the declared disaster or emergency period, or any longer  
9 period authorized by the designated state official or agency.

10 (7) "Disaster or emergency-related work" means repairing, renovating,  
11 installing, building, rendering services or other business activities that relate to  
12 infrastructure that has been damaged, impaired or destroyed by the declared  
13 disaster or emergency.

14 B.(1) A nonresident business that conducts operations within the state for  
15 purposes of performing work or services related to a declared state disaster or  
16 emergency during the disaster period shall not be considered to have established  
17 a level of presence that would require that business to register, file and/or remit  
18 the taxes imposed by Chapter 1 of Subtitle II of this Title. All income of the  
19 nonresident business that is conducted in this state pursuant to this Section shall  
20 be excluded from gross income and from any filing requirements for such tax.

21 (2) Any out-of-state employee as defined in this Section shall not be  
22 considered to have established residency or a presence in the state that would  
23 require that person or that person's employer to file and pay income taxes or  
24 to be subjected to tax withholdings or to file and pay any other state or local tax  
25 or fee during the disaster period. This includes any related state or local  
26 employer withholding and remittance obligations.

27 C. Nonresident businesses and out-of-state employees shall be required  
28 to pay transaction taxes and fees including but not limited to fuel taxes or sales  
29 and use taxes on materials or services subject to sales and use tax, hotel taxes,

1 car rental taxes or fees that the nonresident business or out-of-state employee  
2 purchases for use or consumption in the state during the disaster period, unless  
3 such taxes are otherwise exempted during a disaster period.

4 D. Any nonresident business or out-of-state employee that remains in the  
5 state after the disaster period will become subject to the state's normal  
6 standards for establishing presence, residency or doing business in the state and  
7 will therefore become responsible for any business or employee tax  
8 requirements that ensue.

9 E. The secretary of the Department of Revenue may promulgate  
10 necessary rules and regulations, develop and issue forms or online processes to  
11 implement the provisions of this Section all in accordance with the  
12 Administrative Procedure Act.

13 \* \* \*

14 §111. Definitions

15 A. Wages. For purposes of this Subpart the term "wages" means all  
16 remuneration (other than fees paid to a public official) for services performed by an  
17 employee for his employer, including the cash value of all remuneration paid in any  
18 medium other than cash; except that such term shall not include remuneration paid:

19 \* \* \*

20 (11) for services by a nonresident individual during a declared state of  
21 emergency as provided in R.S. 47:53.5.

22 \* \* \*

23 §242. Segregation of items of gross income

24 All items of gross income, not otherwise exempted in this Chapter, shall be  
25 segregated into two general classes.

26 (1) The class of gross income to be designated as "allocable income" shall  
27 include only the following:

28 \* \* \*

29 (g) salaries, wages or other compensation received by a nonresident

1 individual for personal services; **notwithstanding any other provision of law to the**  
 2 **contrary, salaries, wages and other compensation received by a nonresident**  
 3 **individual for personal services rendered during a declared disaster as defined**  
 4 **in R.S. 47:53.5 shall not be an item of gross allocable income.**

5 (h) income from construction, repair, or other similar services.  
 6 **Notwithstanding any other provision of law to the contrary, income from**  
 7 **construction, repair, or other similar services received by a nonresident**  
 8 **corporation for disaster or emergency related work rendered during a declared**  
 9 **disaster as defined in R.S. 47:53.5 shall not be an item of gross allocable income.**

10 (2) The class of income to be designated as "apportionable income" shall  
 11 include all items of gross income which are not properly includible in allocable  
 12 income as defined in this Section. **Notwithstanding any other provision of law to**  
 13 **the contrary, salaries, wages and other compensation received by a nonresident**  
 14 **individual for personal services rendered during a declared disaster and income**  
 15 **from construction, repair, or other similar services received by a nonresident**  
 16 **corporation for disaster or emergency related work rendered during a declared**  
 17 **disaster as defined in R.S. 47:53.5 shall not be an item of gross apportionable**  
 18 **income.**

19 \* \* \*

20 §287.67. Louisiana net income defined

21 "Louisiana net income" means net income which is earned within or derived  
 22 from sources within the state of Louisiana. **However, Louisiana net income shall**  
 23 **not include income received by a nonresident corporation for construction,**  
 24 **repair, or other similar services for disaster or emergency related work**  
 25 **rendered during a declared disaster as defined in R.S. 47:53.5.**

26 Section 3. The provisions of this Act shall be applicable to all tax years beginning  
 27 on and after January 1, 2013.

28 Section 4. This Act shall become effective upon signature by the governor or, if not  
 29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 3 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Danielle Doiron.

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#### DIGEST

Proposed law establishes the Rapid Response to Declared Disasters Income Tax Exclusion Act to exclude from gross income certain monies received for services rendered by nonresidents in response to a disaster or emergency.

Proposed law defines the following terms:

- (1) "Registered business in the state" means a business entity that is currently registered to do business in the state and was registered prior to a declared state of emergency.
- (2) "Nonresident business" means a business entity whose services are requested by a registered business in the state or by a state or local government for purposes of performing disaster or emergency related work in the state and that prior to the declared state of emergency:
  - (a) Is not qualified or registered to do business in this state;
  - (b) Has no employees, agents or independent contractors in this state;
  - (c) Is not transacting business in this state; and
  - (d) Has not filed and is not required to file any state or local tax return in this state.

Provides that a "nonresident business" includes a business entity that is affiliated with a registered business in this state solely through common ownership.

- (3) "Out-of-state employee" means a nonresident individual who does not provide services or activities in this state, except for disaster or emergency related work during a 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 declared by any of the following:
  - (a) A disaster or emergency has been declared by executive order or proclamation by the governor.
  - (b) A disaster or emergency for which a federal declaration of disaster or emergency has been issued by the president.

- (c) An event within the state for which a good faith response is required and for which a registered business notifies the governor or appropriate local official of the event and the governor or local official declares a disaster or emergency as provided by law.
- (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 any other authorized official of the state whichever occurs first, and that extends for a period of 60 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 declared disaster or emergency.

Proposed law requires that operations of a "nonresident business" conducted in the state for work or services related to a declared state disaster or emergency shall not be considered to have a level of presence that would require it to register or remit taxes to the department as required by law and excludes income derived from such operations from gross income.

Proposed law requires that "out-of-state-employees" not be considered to have established residency or presence in the state that would require that person or person's employer to file and pay income taxes or be subjected to tax withholdings or to file and pay any other state or local tax or fee during the disaster period, including any related state or local employer withholding and remittance obligations.

Proposed law provides that "nonresident businesses" and "out-of-state employees" shall be required to pay transaction taxes and fees including but not limited to fuel taxes or sales and use taxes on materials or services subject to sales and use tax, hotel taxes, car rental taxes or fees that the nonresident business or out-of-state employee purchases for use or consumption in the state during the disaster period, unless such taxes are otherwise exempted during a disaster period.

Proposed law provides that any "nonresident business" or "out-of-state employee" that remains in the state after the disaster period will become subject to the state's normal standards for establishing presence, residency, or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

Proposed law authorizes the secretary of the Department of Revenue to promulgate necessary rules and regulations, develop and issue forms or online processes to implement the tax credit program.

Present law provides for definitions for "wages" with regard to the income tax for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash and provides for terms excluded from remuneration.

Proposed law retains present law and adds an exclusion for services by a nonresident individual during or in response to a declared state of emergency.

Present law provides for a class of gross income designated as "allocable income".

Proposed law excludes salaries, wages and other compensation received by a "nonresident individual" for personal services rendered during a declared disaster from gross "allocable income".

Proposed law excludes income from construction, repair, or other similar services received by a "nonresident corporation" for disaster or emergency related work rendered during a declared disaster from gross "allocable income".

Present law provides for a class of gross income designated as "apportionable income".

Proposed law excludes salaries, wages and other compensation received by a nonresident individual for personal services rendered during a declared disaster and income from construction, repair, or other similar services received by a nonresident corporation for disaster or emergency related work rendered during a declared disaster from gross "apportionable income".

Proposed law provides that the definition of "Louisiana net income" does not include income received by a "nonresident corporation" for construction, repair, or other similar services for disaster or emergency related work rendered during a declared disaster.

Proposed law is applicable to all tax years beginning on or after January 1, 2013.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:242 and 287.67(1)(g), (h), and (2); adds R.S. 47:53.5 and 111(A)(11))