



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC INFORMATION LETTER #16-13

SUBJECT: Emergency Related Infrastructure Work by an Out-of-State Business or Employee in South Carolina Due to Hurricane Matthew (Taxes, Licensing, and Registration)

DATE: October 14, 2016

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S. C. Code Ann. Section 12-2-110 (Supp. 2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

Overview. Code Section 12-2-110 provides that a business that does not have a presence in, or conduct business in, South Carolina whose services are requested by a business registered in South Carolina or by a state or local government for purposes of performing “disaster or emergency-related work” in South Carolina is exempt from state and local business registration and tax payment and filings during the “disaster period.” The “disaster period” begins within 10 days of the first day of notification by the Governor, President, or Director of the Department of a declared state disaster or emergency, whichever occurs first, and ends 60 days after the declared period ends, or any longer period authorized by the designated state official or agency.

On October 11, 2016, President Obama issued an emergency disaster declaration for the State of South Carolina authorizing the Federal Emergency Management Agency (FEMA) to coordinate disaster relief efforts in the areas affected by Hurricane Matthew beginning October 4, 2016.¹

¹ See SC Information Letter #16-12 for a list of counties identified by the President’s declaration as a federal disaster area.

Accordingly, certain out-of-state businesses performing disaster work related to infrastructure that has been damaged, impaired, or destroyed as a result of Hurricane Matthew may be eligible for the special registration and tax exemptions provided in Code Section 12-2-110. The special registration and tax exemptions under this provision are limited to out-of-state businesses that have a request from a registered business in South Carolina, the State government, or a local government to repair, renovate, install, build, render services or other business activities related to the following infrastructure damaged, impaired, or destroyed as a result of Hurricane Matthew:

- communications networks;
- electric generation, transmissions and distribution systems;
- water pipelines;
- public roads and bridges; and
- related facilities to these networks, systems, pipelines, roads and bridges that service multiple customers or citizens, such as buildings, offices, lines, poles, pipes, structures and equipment.

CAUTION: The special registration and tax exemptions under Code Section 12-2-110 apply only to out-of-state businesses/employees performing disaster work related to the infrastructure listed above. See Code Section 12-2-110(A)(4) and (7) defining “infrastructure” and “disaster or emergency related work.”

Code Section 12-2-110 DOES NOT APPLY to out-of-state businesses/employees performing disaster work related to the repair, renovation or building of any other commercial property or residential property – e.g., mold remediation in a personal residence; repair or rebuilding of a retail store, professional office building, or residence, etc.

Code Section 12-2-110(A) contains the definitions necessary for a business to determine its eligibility for the special provisions in Code Section 12-2-110. These definitions have been included at the end of this document as a reference.

Out-of-State Business Disaster Period Exemptions. An out-of-state business performing work or services in South Carolina related to a declared state disaster or emergency is not considered to have established a level of presence that would require it to register, file, and remit state and local taxes or require the business or its out-of-state employees to be subject to any state licensing or registration requirement. Code Section 12-2-110(B)(1)(a).

Out-of-State Employee Disaster Period Exemptions. An out-of-state employee is not considered to have established residency or a presence in South Carolina that would require him or his employer to file and pay income taxes or be subject to tax withholdings or to file and pay any other state or local tax or fee during a disaster period resulting from his performance of disaster-related work. Code Section 12-2-110(B)(1)(b).

Specific Tax, Registration and Licensing Exemptions. If an out-of-state business qualifies under this code section, it is exempt from all state or local business licensing or registration requirements (including South Carolina Public Service Commission and Secretary of State licensing and regulatory requirements) and is not required to register, file, or remit state and local taxes or fees, including unemployment insurance, state or local occupational licensing fees, sales and use tax, or property tax on equipment used or consumed during the disaster period.

For purposes of state or local tax measured by net or gross income or receipts, all activity of the out-of-state business conducted in South Carolina pursuant to this code section is 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. Code Section 12-2-110(B)(1)(a).

Taxes and Fees Not Covered. Out-of-state businesses and employees are not exempt under Code Section 12-2-110 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 South Carolina during the disaster period, unless the taxes or fees are otherwise exempt during a disaster period. Code Section 12-2-110(B)(2).

Notification of Responding Business to Department. An out-of-state business shall provide the Department a notification statement that it is in South Carolina for purposes of responding to the disaster caused by Hurricane Matthew. The statement must include the business name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information. A registered business in South Carolina shall, upon request, provide this notification information for an out-of-state affiliate that enters South Carolina and also include contact information for the registered business. Code Section 12-2-110(C).

The notification may be emailed to taxregistration@dor.sc.gov or mailed to:

South Carolina Department of Revenue
Attn: Registration Unit – Hurricane Matthew
PO Box 125
Columbia, SC 29214

In South Carolina After Declared Disaster. A business or employee that remains in South Carolina after the disaster period becomes subject to South Carolina's normal standards for establishing presence, residency or doing business and resulting requirements. Code Section 12-2-110(B)(3). They shall notify the Department and must comply with state and local registration, licensing, and filing requirements resulting from establishing business presence or residency in South Carolina. Code Section 12-2-110(C)(2). This notification should be sent to the mailing address or email address provided above.

Definitions. For purposes of Code Section 12-2-110:

“Out-of-state business” means a business entity that has no presence in South Carolina and conducts no business in South Carolina whose services are requested by a registered business² or by a state or local government for purposes of performing disaster or emergency-related work in South Carolina. The term includes a business entity that is affiliated with the registered business in South Carolina solely through common ownership. The out-of-state business must have no registrations or tax filings or nexus in South Carolina before the declared state disaster or emergency. Code Section 12-2-110(A)(2).

“Out-of-state employee” means an employee who does not reside in or work in South Carolina, except for disaster or emergency-related work during the disaster period. Code Section 12-2-110(A)(3).

“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. Code Section 12-2-110(A)(7).

“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. Code Section 12-2-110(A)(4).

“Declared state disaster or emergency” means a disaster or emergency event:

- (1) For which a Governor’s state of emergency proclamation has been issued;
- (2) For which a presidential declaration of a federal major disaster or emergency has been issued; or
- (3) Other disaster or emergency event within South Carolina for which a good faith response effort is required and for which the Director of the Department designates the event as a disaster or emergency. Code Section 12-2-110(A)(5).

“Disaster period” means a period that begins within 10 days of the first day of the Governor’s proclamation, the President’s declaration, or designation by the Director of the Department of a declared state disaster or emergency, whichever occurs first, and ends 60 days after the declared state disaster or emergency period ends, or any longer period authorized by the designated state official or agency. Code Section 12-2-110(A)(6).

Additional Information. For additional information regarding taxpayer eligibility or the notification requirements under Code Section 12-2-110, taxpayers may contact the Department’s Registration Section at (803) 896-1350.

²“Registered business” means a business entity that is registered to do business in South Carolina before the declared state disaster or emergency. Code Section 12-2-110(A)(1).