



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

GUIDELINE - TAX RELIEF FOR DISASTER OR EMERGENCY REMEDiation WORK BY OUT-OF-STATE BUSINESSES

INTRODUCTION

A natural or other disaster or emergency can damage or threaten to damage natural gas, electrical, or telecommunication equipment and systems. The incapacity or destruction of any of these critical infrastructure systems can pose a serious risk to the health, safety, and economic or physical security of the citizens and businesses in North Dakota and surrounding region. In such a disaster or emergency, it may be necessary to enlist the help of out-of-state businesses having the requisite skills and equipment to replace or repair this critical infrastructure.

To facilitate the enlistment of qualified out-of-state businesses, North Dakota law provides exemptions from certain state and local taxes, fees, and filing requirements. The exemptions are available to qualifying out-of-state businesses and their out-of-state employees who enter North Dakota for the sole purpose of performing qualifying disaster or emergency remediation work during a disaster response period in response to a declared state disaster or emergency.

Purpose and Scope of Guideline

This guideline contains information about the tax relief available under North Dakota Century Code ch. 37-17.5 for the taxes, fees, and filing requirements administered by the North Dakota Office of State Tax Commissioner.

Other state agencies - For information on the tax relief available for taxes, fees, and filing requirements administered by the other state agencies specified in the law—Job Service (state unemployment), Workforce Safety and Insurance (workers' compensation), and Secretary of State—see the statute or contact the other state agency. Each state agency may develop its own procedures, forms, or online processes for the purpose of administering the law governing the disaster or emergency remediation work tax relief. *Contact information is provided at the end of this guideline.*

GENERAL INFORMATION

Out-Of-State Business - An out-of-state business means a business, including a business that is affiliated solely through common ownership with a North Dakota-registered business, which meets all of the following:

- It did not have a business presence in North Dakota before the declared state disaster or emergency.
- It is in North Dakota at the request of a requesting entity for the sole purpose of performing disaster or emergency remediation work during a disaster response period.
- If required, it has a valid license from its principal state of business to perform the type of work it engages in.

Out-Of-State Employee - An out-of-state employee means an individual who meets all of the following:

- The individual is not a legal resident of North Dakota.
- The individual is employed by an out-of-state business.
- The individual is in North Dakota for the sole purpose of performing disaster or emergency remediation work during a disaster response period.
- If required, the individual has a valid license from the employee's principal state of employment to perform the type of work the employee engages in.

Requesting Entity - A requesting entity means any of the following:

- An officer or agency of North Dakota
- A political subdivision of North Dakota
- A business registered to do business in North Dakota before the declared state disaster or emergency that is affiliated solely through common ownership with the out-of-state business.

Disaster or Emergency Remediation Work - Disaster or emergency remediation work means the repair or replacement of critical infrastructure that has been or is under threat of being damaged, impaired, or destroyed because of a declared state disaster or emergency.

Critical Infrastructure - Critical infrastructure means real and personal property that makes up a natural gas, electrical, or telecommunication transmission system, the incapacity or destruction of which would have a debilitating impact on public health or safety and the economic and physical security of North Dakota or the region.

Declared State Disaster or Emergency - A disaster response period or emergency means an event for which either (1) a disaster or emergency declaration is issued by the governor of North Dakota or (2) a federal major disaster or emergency declaration is issued by the President of the United States.

Disaster Response Period - A disaster response period means the period of time that begins ten days before, and ends sixty calendar days after the end of, a declared state disaster or emergency. It includes any extension of the period granted by executive order of the governor of North Dakota.

TAX RELIEF FOR OUT-OF-STATE BUSINESSES

The tax relief described in this section only applies to taxes, fees, and filing requirements administered by the Office of State Tax Commissioner.

The tax relief for an out-of-state business described in this section is only effective during a disaster response period. An out-of-state business that remains in North Dakota after the end of a disaster response period becomes subject to all applicable state and local tax filing and payment requirements that normally apply beginning on the day following the end of a disaster response period. However, in the case of an out-of-state business that needs additional time after the disaster response period to remove equipment brought into North Dakota for temporary use during the disaster response period, the tax relief will remain in effect until the equipment is removed, if done in a reasonable amount of time.

No Business Presence

Except as provided under “Transaction Taxes and Fees,” an out-of-state business is considered to have no business presence in North Dakota that would subject it or its out-of-state employees to any tax or fee administered by the Office of State Tax Commissioner.

Exemption from Tax Filing and Payment Requirements

Except as provided under “Transaction Taxes and Fees,” an out-of-state business is exempt from the filing and payment requirements with respect to any state or local tax administered by the Office of State Tax Commissioner. This includes the withholding of North Dakota income tax from wages paid to its out-of-state employees.

Business Activity Disregarded for Net Income or Gross Receipts Tax Filing Requirements

All activity conducted by an out-of-state business in North Dakota during a disaster response period is disregarded for purposes of any filing requirement for any state or local tax that, in whole or in part, is imposed on or measured by net income or gross receipts. This includes an income tax return for a unitary or combined group of which an out-of-state business may be a part.

Business Activity Not Sourced to North Dakota for Apportionment of Business Income

For income tax purposes, the apportionment factors attributable to an out-of-state business's activity in North Dakota during a disaster response period are not sourced to North Dakota by the out-of-state business or any member of its affiliated group.

Exemption from Sales and Use Tax on Equipment Brought Into North Dakota

Equipment that an out-of-state business brings into North Dakota temporarily for use during a disaster response period is exempt from state and local sales and use tax if the equipment is removed from North Dakota within a reasonable period of time following the end of the disaster response period.

TAX RELIEF FOR OUT-OF-STATE EMPLOYEES

The tax relief described in this section only applies to taxes, fees, and filing requirements administered by the Office of State Tax Commissioner.

The tax relief for an out-of-state employee described in this section is only effective during a disaster response period. An out-of-state employee who remains in North Dakota after the end of a disaster response period becomes subject to all applicable state and local tax filing and payment requirements that normally apply beginning on the day following the end of a disaster response period. However, in the case of an out-of-state business that needs additional time after the disaster response period to remove equipment brought into North Dakota for temporary use during the disaster response period, the tax relief will remain in effect until the equipment is removed, if done in a reasonable amount of time.

No Business Presence

Except as provided under "Transaction Taxes and Fees," an out-of-state employee is considered to have no presence in North Dakota that would subject the individual or the individual's employer to any North Dakota income tax, income tax withholding (from wages), or other tax or fee administered by the Office of State Tax Commissioner.

Exemption from Tax Filing and Payment Requirements

Except as provided under "Transaction Taxes and Fees," an out-of-state employee is exempt from the filing and payment requirements with respect to any state or local tax administered by the Office of State Tax Commissioner.

TRANSACTION TAXES AND FEES

The transaction taxes and fees listed below are not exempt from state or local taxation, even if incurred during a disaster response period, and must be paid by an out-of-state business or employee:

- Sales and use tax on taxable purchases or services
- Fuel taxes
- Hotel taxes
- Car rental taxes or fees

NOTIFICATION REQUIREMENTS

The notification requirements described in this section only apply for purposes of claiming an exemption from taxes, fees, and filing requirements administered by the Office of State Tax Commissioner. For the notification requirements of the other state agencies specified in the law—Job Service, Workforce Safety and Insurance, and Secretary of State—separately contact those agencies. Contact information is provided at the end of this guideline.

To qualify for the tax relief described in this guideline, an out-of-state business must complete an Out-Of-State Business Disaster or Emergency Remediation Work Notification form and file it with the Office of State Tax Commissioner.

The notification form may be filed any time after entering North Dakota, but no later than the end of the disaster response period.

Affiliate of a North Dakota-registered business – If an out-of-state business is an affiliate of a North Dakota-registered business solely through common ownership, the North Dakota-registered business must complete and file the Out-Of-State Business Disaster or Emergency Remediation Work Notification form on behalf of the out-of-state business.

Submit the completed notification form in one of the following ways:

- Attach in a secure email to taxregistration@nd.gov
- Fax to 701-328-0332
- Mail to: Registration Section
Office of State Tax Commissioner
600 E Boulevard Ave Dept 127
Bismarck ND 58505-0599

QUESTIONS

Direct questions to the applicable state agency as follows:

Office of State Tax Commissioner

600 E Boulevard Ave Dept 127
Bismarck ND 58505-0599
Phone: 701-328-1241 or 877-328-7088 (toll free)
Email: taxregistration@nd.gov
www.tax.nd.gov

Job Service North Dakota

1601 E Century Ave
Bismarck ND 58503-0645
Phone: 701-328-2825
Email: jsndweb@nd.gov
www.jobsnd.com

Workforce Safety and Insurance

1601 E Century Ave Ste 1
Bismarck ND 58503-0649
Phone: 800-777-5033 (toll free)
Email: ndwsi@nd.gov
www.workforcesafety.com

Secretary of State

600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500
Phone: 701-328-2900 or 800-352-0867 (toll free)
Email: sos@nd.gov
www.sos.nd.gov