



SENATE BILL 498: Facilitate Response to Disasters.

2019-2020 General Assembly

Committee:		Date:	November 15, 2019
Introduced by:		Prepared by:	Cindy Avrette Staff Attorney
Analysis of:	S.L. 2019-187		

OVERVIEW: *S.L. 2019-187 helps facilitate and expedite recovery after a natural disaster in two ways:*

- *Provides that nonresident businesses and nonresident employees that are requested to come into the State by a critical infrastructure company are not doing business in this State for the disaster-related work performed during the disaster response period; therefore are exempt from registration requirements and various State tax filing and payment requirements.*
- *Allows the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration without requiring that person to post a bond or obtain a certificate of authority to operate in this State from the Secretary of State.*

This act became effective on August 1, 2019.

CURRENT LAW AND BILL ANALYSIS: S.L. 2019-187 provides tax and regulatory relief to out-of-state businesses that come into the State immediately after a disaster to help with critical infrastructure repair. At least 29 states have enacted similar disaster recovery legislation. Those states include Ohio, Florida, Texas, Virginia, Georgia, South Carolina, and Tennessee. The act does two things:

- Excludes qualifying nonresident businesses and employees from income, franchise, and unemployment insurance tax as well as business registration requirements.
- Allows the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration.

Nonresident business and nonresident employees. – A business or individual must file the appropriate returns and pay the requisite amount of taxes on any income received from North Carolina sources that was attributable to the ownership of any interest in real or tangible personal property in the State or derived from a business, trade, profession, or occupation carried on in the State. This requirement applies to residents as well as nonresidents. Nonresidents who must pay income taxes to North Carolina may usually receive a credit for the amount paid to North Carolina on the taxes owed to their state of residence so that the income is not taxed twice.

S.L. 2019-187 provides that nonresident businesses and nonresident employees that are requested to come into the State by a critical infrastructure company are not doing business in this State for the disaster-related work performed during the disaster response period, and are therefore exempt from registration requirements and various State tax requirements. The tax and regulatory relief is limited in several ways:

- Applies only to nonresident businesses and nonresident employees who come into the State at the request of a critical infrastructure company.

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Senate Bill 498

Page 2

- Applies only to disaster-related work performed during a disaster response period.
- Applies only if the nonresident business or nonresident employee has no other income attributable to this State. For example, it only applies in situations where, but for this work, the business or employee would not be subject to North Carolina income and franchise taxes.

For purposes of the tax and regulatory relief provided by this act, the following definitions apply:

Critical infrastructure company. – A corporation doing business in this State prior to the disaster declaration that meets one or more of the following:

- Provides broadband, mobile telecommunications, telecommunications, or wireless Internet access.
- Is subject to control of the NC Utilities Commission, the NC Rural Electrification Authority, the Federal Communications Commission, or the Federal Energy Regulatory Commission.

Nonresident business. – An entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period. The term "nonresident business" includes a corporation, an affiliate or subsidiary of a critical infrastructure company, a pass-through entity, as well as a sole proprietorship.

Critical infrastructure. – Examples of critical infrastructure include communications networks; electric generation, transmission, and distribution systems; natural gas transmission and distribution systems; water pipelines; and related support facilities.

Disaster-related work. – Repairing, renovating, installing, building, or performing services on critical infrastructure.

Disaster response period. – Beginning 10 days prior to the first day of a disaster declaration and extending until the earlier of the following:

- 60 days following the expiration of the disaster declaration, as provided under G.S. 166A-19.21(c).
- 180 days following the issuance of the disaster declaration. This period of time coincides with the general law.

The act provides relief from the following regulatory laws:

- *Certificate of Authority.* – A nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company does not have to obtain a certificate of authority from the Secretary of State's office to do business in this State. Under general law, a foreign corporation that performs work in this State must obtain a certificate of authority from the Secretary of State. The application fee for a certificate of authority is \$250. Failure to obtain a certificate of authority would prevent a foreign corporation from maintaining an action or proceeding in any court in this State. The relief is granted to both corporations and LLCs.
- *Unemployment Insurance.* – Service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered employment for purposes of the State unemployment insurance laws.

The act provides relief from the following tax provisions:

Senate Bill 498

Page 3

- **Franchise Tax.** – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's franchise tax. The franchise tax applies to a corporation's net worth. For a C corporation, the rate is \$1.50 per \$1,000 of the corporation's tax base. For an S corporation, the rate is \$200 for the first \$1,000,000 of the corporation's tax base and \$1.50 per \$1,000 of the tax base that exceeds this amount. The amount of tax owed to the State would be determined by the corporation's apportionment percentage and could not be less than \$200.
- **Corporate Income Tax.** – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's corporate income tax. The corporate income tax rate is 2.5%. Typically, a taxpayer is allowed to deduct payments made to an affiliate or subsidiary from the taxpayer's taxable income because its affiliate or subsidiary is paying taxes on that amount. In this instance, however, a taxpayer would be required to add-back any payments made to an affiliate or subsidiary that is not subject to tax for this reason for purposes of determining the taxpayer's State taxable income, to the extent the payments are deducted by the taxpayer for federal tax purposes.
- **Informational Returns.** – Pass-through entities, such as an S corporation or a partnership, do not have to file informational returns with the Department of Revenue if the entity is a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. However, the entity must provide information to their shareholders and partners so that they may properly file a North Carolina return if they are otherwise required to file one.
- **Individual Income Tax.** – A nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's individual income tax. The individual income tax rate is 5.25%. The standard deduction amounts for 2019 are \$20,000 married filing jointly; \$15,000 head of household; and \$10,000 single/married filing separately.
- **Withholding Tax.** – A business does not have to withhold North Carolina individual income taxes for wages paid to a nonresident employee or for compensation paid to an ITIN contractor who is a nonresident if the income is derived from disaster-related work performed during a disaster response period at the request of a critical infrastructure company.

Temporary license to import, export, distribute, or transport motor fuel

The act allows the Secretary of Revenue to issue a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration without the applicant posting a bond or obtaining a certificate of authority to operate in this State from the Secretary of State. The temporary license expires upon the expiration of the disaster declaration. The person would continue to be responsible for filing returns and paying the required motor fuel taxes. The Secretary could not renew or issue a temporary license to a person that fails to file the required returns or make payments of the required taxes.

EFFECTIVE DATE: This act became effective when it was signed into law on August 1, 2019, and applies to disaster declarations made on or after that date.