

Disaster Relief

Information for Out-of-State Businesses and Out-of-State Employees Performing Disaster Relief Work in Wisconsin

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I. INTRODUCTION

Qualifying out-of-state businesses and out-of-state employees are allowed an exemption from certain Wisconsin registration and tax reporting requirements, if the qualifying employer or employee is in Wisconsin solely to perform disaster relief work in connection with a state of emergency declared by the governor. This publication explains who qualifies for the exemptions provided in 2015 Wis. Act 84 and how to claim an exemption.

An “*out-of-state business*” means a sole proprietorship, partnership, limited liability company, joint venture, corporation, or other organization or enterprise, whether operated for profit or not for profit, that is not organized under the laws of Wisconsin and that, except for disaster relief work during a disaster period, was not doing business in Wisconsin during the three taxable years immediately preceding the disaster period or the current taxable year in which the declared state of emergency occurs. “*Taxable year*” has the meaning in sec. 71.01(12), Wis. Stats.

An “*out-of-state employee*” means an individual who does not work in this state, except for disaster relief work during a disaster period, and who immediately prior to that declared state of emergency was not a resident of Wisconsin, was not doing business in Wisconsin that required a tax return to be filed in Wisconsin, and was not performing services in Wisconsin that required a Wisconsin tax return to be filed.

A qualifying business or employee, as described above, engaged in qualified disaster relief work, who provides notice to the Department of Revenue, is exempt from:

- The requirement to register for a business tax registration certificate (Parts IV. and V.)
- The requirement to register for a seller's permit (Part V.)
- The requirement to register for a use tax certificate (Part V.)
- The requirement to register for a Wisconsin withholding tax permit (Part IV.)
- Use tax liability on materials and equipment purchased outside Wisconsin and brought in to Wisconsin solely for disaster relief work (Part V.)
- Income/franchise tax liability on income from disaster relief work (Part III.)
- The requirement to withhold/have Wisconsin tax withheld from wages paid to a qualifying employee for disaster relief work (Part IV.)

These exemptions apply during a disaster relief period.

CAUTION

The information in this publication reflects the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of July 1, 2016. Laws enacted and in effect after that date, new administrative rules, and court decisions may change the interpretations in this publication.

The examples and lists of taxable and exempt sales provided in this publication are not all-inclusive. They merely set forth common examples.

II. COMMON QUESTIONS

For purposes of this publication, the following applies:

A. When Does a "Disaster Period" Begin?

A "disaster period" begins 10 days before a declared state of emergency and ends 60 days after the declared state of emergency ends.

B. What is a "Declared State of Emergency?"

A "declared state of emergency" means a state of emergency declared by the governor under sec. 323.10, Wis. Stats.

C. What is Considered "Disaster Relief Work?"

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

"Infrastructure" means property and equipment owned or used by a telecommunications provider or cable operator or that is used for communications networks, including telecommunications, broadband, and multichannel video networks; electric generation, transmission, and distribution systems; gas distribution systems; water pipelines; and any related support facilities that service multiple customers or citizens, including buildings, offices, lines, poles, pipes, structures, equipment, and other real or personal property.

D. What Qualifies as "Doing Business in This State?"

"Doing business in this state" has the meaning in sec. 71.22(1r), Wis. Stats., except that members of a combined group, as defined in sec. 71.255(1)(a), Wis. Stats., are not considered to be doing business in Wisconsin based solely on another member of the combined group doing business in Wisconsin. A business is doing business in Wisconsin, for sales and use tax purposes (Chapter 77), if it performs disaster relief work in Wisconsin.

III. INCOME/FRANCHISE TAX REPORTING

An exemption from filing income/franchise tax returns is available for out-of-state taxpayers who receive income in Wisconsin for performing approved disaster relief work.

A. Individual Income Tax Filing Exemption

A nonresident individual is not required to file a Wisconsin income tax return if their sole income from Wisconsin sources is from performing disaster relief work.

B. Nexus Exception

An out-of-state business may perform business in Wisconsin without becoming subject to income or franchise tax if the only activity the business performs in Wisconsin is disaster relief work.

C. Corporate Franchise/Income Tax Filing Exemption

An out-of-state corporation whose only activity in Wisconsin is disaster relief work is not required to file a corporate franchise/income tax return because income derived from the disaster relief work is not taxable in Wisconsin.

D. Combined Group Members

If an out-of-state corporation is required to be included in a combined group because it meets the requirements of [sec. 71.255\(2\), Wis. Stats.](#), when computing the net income of the corporation, the income received by the out-of-state corporation for performing disaster relief work may be subtracted when determining the income subject to taxation.

E. Apportionable Income

For purposes of determining the portion of income taxable to Wisconsin by an out-of-state business, gross receipts from the sale of property or services related to performing disaster relief work are not considered sales for purposes of the sales factor.

IV. PAYING WAGES FOR DISASTER RELIEF WORK PERFORMED IN WISCONSIN

A. Out-of-State Employer Exemptions

- *No requirement to register for a business tax registration certificate* – An out-of-state business, whose only payments for services performed in Wisconsin are to out-of-state employees for disaster relief work, is not required to obtain a business tax registration certificate.
- *No requirement to obtain a Wisconsin withholding tax permit* – An out-of-state business is exempt from obtaining a Wisconsin withholding permit for disaster relief work performed during a disaster period.
- *No Wisconsin income tax shall be withheld from wages paid to a qualifying out-of-state employee for disaster relief work.*

See *How to Claim An Exemption* in Part VI.

B. Out-of-State Employee Exemptions

- *No Wisconsin income tax shall be withheld from wages paid to a qualifying out-of-state employee for disaster relief work.*
- *No income tax liability on income from disaster relief work* - Compensation paid to a qualifying out-of-state employee who is performing disaster relief work is not considered compensation paid in this state.

V. SALES AND USE TAX

A qualifying out-of-state business, as defined in Part II, performing disaster relief work is provided an exemption from certain registration requirements. A use tax exemption is also allowed for certain property purchased by a qualifying out-of-state business and used in Wisconsin for disaster relief work.

CAUTION: Although the qualifying out-of-state business is not required to obtain a business tax registration certificate, Wisconsin seller's permit, or use tax certificate, the qualifying out-of-state business is responsible for Wisconsin sales or use tax on taxable sales and purchases in Wisconsin.

A. Registration Exemptions

A qualifying out-of-state business is exempt from the following registration requirements:

- The requirement to register/obtain a business tax registration certificate.
- The requirement to register/obtain a Wisconsin seller's permit.

B. Use Tax Exemption

A qualifying out-of-state business is exempt from Wisconsin use tax on taxable products and services purchased outside of the state and brought into Wisconsin for disaster relief work.

C. Wisconsin Sales and Purchases – Requirement to Report and Pay

Sales - A qualifying out-of-state business must report and remit sales tax on its taxable sales in Wisconsin using Form ST-12, *Sales and Use Tax Return*.

Purchases – A qualifying out-of-state business must also pay tax on its Wisconsin purchases of taxable products and services. If tax is not paid at the time of purchase, the business must report use tax using Form ST-12, *Sales and Use Tax Return*.

Send Form ST-12 and payment, along with a letter indicating the business is in Wisconsin solely to perform disaster relief work, to:

Sales and Payments Unit
 Wisconsin Department of Revenue
 Mail Stop 3-14
 PO Box 8946
 Madison WI 53708-8946

Form ST-12 is due by January 31 following the calendar year in which the Wisconsin sales and purchase were made.

INDEX TO EXAMPLES

In the examples, "out-of-state business" is a business that meets the definition provided in Part II.

Example 1: *Wisconsin Business Uses Equipment to Perform Disaster Relief Work*

Example 2: *Out-of-State Business Brings Equipment into Wisconsin for Use Only to Perform Disaster Relief Work*

Example 3: *Out-of-State Business Brings Materials into Wisconsin for Use in Performing Disaster Relief Work*

Example 4: *Out-of-State Business Purchases Equipment in Wisconsin for Use Only to Perform Disaster Relief Work*

Example 5: *Out-of-State Business Purchases Materials in Wisconsin for Use in Performing Disaster Relief Work*

Example 6: *Out-of-State Business Rents Equipment in Wisconsin for Use Only to Perform Disaster Relief Work*

Example 1: Wisconsin Business Uses Equipment to Perform Disaster Relief Work

Wisconsin Business performs disaster relief work in Wisconsin. Wisconsin Business purchases equipment in Wisconsin and outside Wisconsin for use solely in performing disaster relief work. Wisconsin Business' purchases of the equipment is subject to Wisconsin sales or use tax.

Example 2: Out-of-State Business Brings Equipment into Wisconsin for Use Only to Perform Disaster Relief Work

Out-of-State Business performs disaster relief work in Wisconsin. Out-of-State Business brings its own equipment into Wisconsin solely to perform the disaster relief work. Out-of-State Business is not liable for Wisconsin use tax on this equipment. **Note:** *If Out-of-State Business purchases equipment or other taxable products and services in Wisconsin, Out-of-State Business must pay Wisconsin sales or use tax on such products and services.*

Example 3: Out-of-State Business Brings Materials into Wisconsin for Use in Performing Disaster Relief Work

Out-of-State Business performs disaster relief work in Wisconsin. Out-of-State Business brings building materials into Wisconsin that it will use in performing disaster relief work. Out-of-State Business is not liable for Wisconsin use tax on these materials. **Note:** *If Out-of-State Business sells uninstalled building materials or other taxable products or services in Wisconsin, Out-of-State Business is liable for Wisconsin sales or use tax on such sales. See Part V.C. for how an out-of-state business reports tax on its sales.*

Example 4: Out-of-State Business Purchases Equipment in Wisconsin for Use Only to Perform Disaster Relief Work

Out-of-State Business performs disaster relief work in Wisconsin. Out-of-State Business purchases equipment in Wisconsin that it will use in performing disaster relief work. Out-of-State Business is liable for Wisconsin sales or use tax on its purchase of this equipment, since the exemption does not extend to property purchased in Wisconsin.

Example 5: Out-of-State Business Purchases Materials in Wisconsin for Use in Performing Disaster Relief Work

Out-of-State Business performs disaster relief work in Wisconsin. Out-of-State Business purchases building materials in Wisconsin that it will use in performing disaster relief work. Out-of-State Business is liable for Wisconsin sales or use tax on its purchase of materials in Wisconsin that will be used in performing real property construction activities, unless an exemption applies. Out-of-State Business may purchase without tax, for resale, materials that will be sold and transferred to its customer as the sale of tangible personal property (e.g., installation of overhead utility lines on land owned by someone other than the owner of the utility lines is tangible personal property). **Note:** *If Out-of-State Business sells taxable products or taxable services in Wisconsin, Out-of-State Business is liable for Wisconsin sales or use tax on such sales. See Part V.C. for how an out-of-state business reports tax on its sales.*

Example 6: Out-of-State Business Rents Equipment in Wisconsin for Use Only to Perform Disaster Relief Work

Out-of-State Business performs disaster relief work in Wisconsin. Out-of-State Business rents equipment in Wisconsin that it will use in performing disaster relief work. Out-of-State Business is liable for Wisconsin sales or use tax on its rental of this equipment, since the exemption does not extend to property purchased or rented in Wisconsin.

VI. HOW TO CLAIM AN EXEMPTION

A. Notice Requirement

Any out-of-state business, and the employer of any out-of-state employee, that wishes to claim any exemption described in this publication must provide notice to the department.

Additionally, a business organized under the laws of Wisconsin must provide the information below for any out-of-state business that is a related entity, as defined in s. 71.22(9am), Wis. Stats., that enters the state to perform disaster relief work.

B. Information to Include

The notice must include the following information for each out-of-state business and out-of-state employee:

1. Legal name and business name, if any.
2. State of domicile or residence.
3. Principal address.
4. Federal tax identification number (e.g., FEIN or social security number).
5. The date of entry to the state for purpose of performing the disaster relief work.
6. Contact information.

C. Notice Due Date

Provide notice to the department no later than 90 days after the last day of a disaster period. The disaster period begins 10 days before a declared state of emergency and ends 60 days after the declared state of emergency ends.

D. Where to Send Notice

Send notice to:

Wisconsin Department of Revenue
PO Box 8966
Madison WI 53708-8966

VII. QUESTIONS?

If you are unable to find an answer to your question, please visit our website at revenue.wi.gov/pages/home.aspx, or you may contact the department:

	Sales, Use, or Withholding Taxes	Income/Franchise Taxes
E-Mail	DORBusinessTax@wisconsin.gov	DORFranchise@wisconsin.gov
Write	Wisconsin Department of Revenue P.O. Box 8949, Mail Stop 5-77 Madison, WI 53708-8949	Wisconsin Department of Revenue PO Box 8949, Mail Stop 3-107 Madison, WI 53708-8949
Telephone	(608) 266-2776	(608) 266-2772
Fax	(608) 267-1030	(608) 267-0834

You may also contact any of the Department of Revenue offices. For a listing of offices and their current hours, please see the department's website at revenue.wi.gov/Pages/FAQS/ise-address.aspx.