Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1513 (Delegate Hixson)
Ways and Means Budget and Taxation

Public Safety - Response to a State Disaster or Emergency - Licensing and Taxes

This bill establishes that an out-of-state business that performs disaster- or emergency-related work during a disaster period does not establish a level of presence that would require the out-of-state business or its out-of-state employees to be subject to specified tax obligations or licensing or registration requirements.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: General fund revenues decrease in years in which a declared State disaster or emergency occurs to account for the exemption from State income taxes and the sales and use tax for specified out-of-state businesses. Transportation Trust Fund (TTF) revenues and Higher Education Investment Fund (HEIF) revenues also decrease to the extent that an out-of-state business is exempt from the State corporate income tax. The amount of any decrease is dependent on numerous factors and cannot be reliably quantified. The bill's requirements can be handled with existing resources.

Unemployment Insurance Trust Fund (UITF) Effect: UITF revenues decrease in years in which a declared State disaster or emergency occurs for an extended period due to the exemption from the requirement that a specified out-of-state business make unemployment insurance contributions. The amount of any decrease is dependent on numerous factors and cannot be reliably quantified.

Local Effect: Local revenues decrease in years in which a declared State disaster or emergency occurs to account for an exemption from income taxes and the personal property tax for specified out-of-state businesses. The amount of any decrease is dependent on numerous factors and cannot be reliably quantified. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions: The bill defines "declared State disaster or emergency" as any disaster or emergency event for which (1) the Governor proclaims a state of emergency; (2) a Presidential Declaration of a federal major disaster or emergency is issued; or (3) a widespread utility outage occurs.

"Disaster- or emergency-related work" means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that is damaged, impaired, or destroyed by the declared State disaster or emergency.

"Infrastructure" means property and equipment owned or used by communications networks, electric generation facilities, electric and gas transmission and distribution systems, water pipelines, and related support facilities.

The bill defines "out-of-state business" as a business entity that (1) has no registrations, nexus, or tax filings in the State prior to the declared State disaster or emergency and (2) is requested by a registered business or the State or a local government to perform disaster- or emergency-related work during a disaster period. "Out-of-state business" includes a business entity that is affiliated with a registered business in the State solely through common ownership. The bill also defines "out-of-state employee" as an employee who does not work in the State, except during a declared State disaster or emergency.

"Registered business" means a business entity that is registered to do business in the State before the declared State disaster or emergency.

Exemptions: The bill exempts the aforementioned out-of-state businesses from (1) State or local licensing or registration requirements; (2) State or county income taxes; (3) unemployment insurance contributions; (4) personal property tax; or (5) any requirement to collect and remit the sales and use tax.

An out-of-state employee may not be required to pay State or county income taxes or be subject to income tax withholding requirements. Additionally, an out-of-state business that employs an out-of-state employee may not be required to pay State or county income taxes or be subject to income tax withholding requirements with respect to any out-of-state employees.

Statement to Comptroller: The bill requires an out-of-state business to provide to the Comptroller a statement that the business is in the State solely for purposes of performing disaster- or emergency-related work. The statement must include the following information for the out-of-state business: (1) name; (2) state of domicile; (3) principal address; (4) federal tax identification number; (5) date of entry into the State; and (6) contact information.

A registered business in the State must also provide this information for any out-of-state business affiliate that enters the State to perform disaster- or emergency-related work.

Current Law:

Suspension of Enforcement of Civil Liabilities: A "person in emergency management service" means a person, who, during an emergency period, is a member of or works for the Maryland Emergency Management Agency or a local emergency management organization. A "person suffering injury or damage" means a person who, during the emergency period, (1) suffers serious personal injury; (2) suffers extensive damage to owned property; or (3) has an immediate family member who dies, suffers a serious personal injury, or suffers extensive damage to owned property.

For the effective period of an official proclamation by the Governor that declares a stated area to be within an actual or threatened emergency or disaster area, the enforcement of specified civil liabilities and legal proceedings and transactions are temporarily suspended against persons in emergency management service and persons suffering injury or damage. Such civil liabilities include the payment of income taxes and real property taxes.

Individual Income Taxes: The State income tax rates range from 2.0% for the lowest taxable income and 5.75% for the highest taxable income. The counties and Baltimore City are required to levy a local income tax on their residents. The tax is assessed as a percentage of the taxpayer's Maryland taxable income. Counties are authorized to set a local income tax rate of at least 1% but not more than 3.2%.

Corporate Income Taxes: Every Maryland corporation and every corporation that conducts business within Maryland is required to pay the corporate income tax. Corporations engaged in multistate operations are required to determine their portion of their modified income attributable to Maryland, based on the amount of their trade or business carried out in Maryland.

Chapter 3 of 2007 special session (SB 2) increased the corporate income tax rate from 7.00% to 8.25%. Chapter 3 also created HEIF and distributed a portion of corporate income tax revenues to that fund. A share of corporate tax income revenues is also directed to TTF.

Sales and Use Tax: The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which are taxed at a rate of 9%. The sales and use tax is the State's second largest source of general fund revenue.

Personal Property Tax: The State has not imposed personal property taxes since fiscal 1984, and all personal property is exempt from the State property tax. However, counties, municipalities, and special taxing districts are authorized to tax personal property. Accordingly, all business entities in Maryland may be required to pay personal property taxes.

Background: In 2012, the Governor declared a state of emergency on two occasions: (1) in June during a "derecho," a type of sudden, violent storm and (2) in October during hurricane "Sandy."

State Fiscal Effect: General fund revenues decrease in years in which a declared State disaster or emergency occurs to account for the exemption from State income taxes (corporate and personal) and the sales and use tax for specified out-of-state businesses. TTF revenues and HEIF revenues also decrease minimally to the extent that any exempt out-of-state business is a corporation and, thus, not required to pay the State corporate income tax.

The amount of any decrease is dependent on the number of declared State disasters or emergencies in future years, the length of the disaster or emergency, and the number of out-of-state businesses that perform services in the State. The decrease is not quantifiable as these factors, particularly the number of declared State disasters or emergencies and their durations, are unknown.

Any impact on fees associated with licensing or registering out-of-state businesses is assumed to be negligible.

UITF Effect: UITF revenues decrease in years in which a declared State disaster or emergency occurs for an extended period due to the exemption from the requirement that a specified out-of-state business make unemployment insurance contributions.

The amount of any decrease is dependent on the number of State disasters or emergencies in future years, the length of the disaster or emergency, and the number of out-of-state businesses that perform services in the State. The Department of Labor, Licensing, and Regulation advises that an out-of-state business with employees providing in-state services for a short period of time is generally exempt from making contributions. However, if a disaster or emergency lasted several months, the business may be subject to unemployment insurance contribution requirements. The decrease is not quantifiable as these factors, particularly the number of declared State disasters or emergencies and their durations, are unknown.

Local Fiscal Effect: Local revenues decrease in years in which a declared State disaster or emergency occurs to account for an exemption from income taxes and the personal property tax for specified out-of-state businesses.

The amount of any decrease is dependent on the number of State disasters or emergencies in future years, the length of the disaster or emergency, and the number of out-of-state businesses that perform services in the State. The decrease is not quantifiable as these factors, particularly the number of declared State disasters or emergencies and their durations, are unknown.

Small Business Effect: The bill may have a potentially meaningful detrimental impact on an in-state small business that provides disaster- or emergency-related services due to increased competition with an out-of-state business exempted from the aforementioned requirements.

The bill may also have a potentially meaningful beneficial impact on an in-state small business that requests an out-of-state business to perform services during a State disaster or emergency. The bill's exemptions may make it easier for the in-state business to procure the assistance of an out-of-state business.

Additional Information

Prior Introductions: None.

Cross File: SB 1037 (Senator King, *et al.*) - Budget and Taxation.

Information Source(s): State Department of Assessments and Taxation; Office of the Attorney General (Consumer Protection Division); Comptroller's Office; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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mlm/kdm	Revised - House Third Reader - April 2, 2013
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