



**COMMISSIONER'S DIRECTIVE #52**

**JULY 2014**

**Effective Date: Upon Publication**

**SUBJECT:** Disaster Recovery Tax Exemptions

**REFERENCES:** IC 6-8-13; IC 8-1-2-1; IC 8-1-2.2-2; IC 8-1-32.6-3; IC 10-14-3-12;  
IC 10-14-3-13; IC 10-14-3-29

**DISCLAIMER:** Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUMMARY**

This directive provides information concerning the disaster recovery exemptions contained in IC 6-8-13 as enacted by HEA 1546-2013. The directive outlines the types of disasters that are covered by the provisions of IC 6-8-13, the entities that will be given exemptions for various items purchased and payroll in Indiana, and the requirements an out-of-state business must comply with to qualify for the exemptions.

**DEFINITIONS**

“Disaster emergency” means a disaster emergency declared under IC 10-14-3-12, a state of emergency declared under IC 10-14-3-13, a local disaster emergency declared under IC 10-14-3-29, or a request by a registered business for disaster or emergency assistance under a mutual assistance agreement.

“Disaster period” means the period 10 days before the day on which a disaster emergency is declared and ending 60 days after the date on which the disaster emergency declaration ends.

“Disaster emergency-related work” means repairing, renovating, installing, building, or rendering services or transacting other business activities related to infrastructure that is damaged, impaired, or destroyed by an event that caused the disaster emergency to be declared.

“Registered business” means an entity that is registered with the department to do business in Indiana before a disaster emergency is declared.

“Infrastructure” means real or personal property or equipment owned or used by a public utility, a municipally owned utility, a joint agency, or a communications service provider. The term also applies to public roads, bridges, and related support facilities.

“Mutual assistance agreement” means an agreement to which one or more registered businesses and one or more out-of-state businesses are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating infrastructure in Indiana may request and receive assistance from an out-of-state business to perform disaster emergency-related work during a disaster period.

“Out-of-state business” means an entity that is not registered as a business, is not incorporated in Indiana, or is otherwise not authorized to do business in Indiana on the date on which a disaster period begins and does not maintain a physical presence in Indiana, other than performing disaster-related work, during the taxable year in which a disaster emergency is declared. The term includes a business whose services are requested by a registered business or by a state or local government for performing disaster emergency-related work in Indiana. The term also includes a business entity that is affiliated with a registered business in Indiana solely through common ownership.

“Out-of-state employee” means an individual who is employed by an out-of-state business at any time during a disaster period and is not a resident of Indiana.

#### **NOTIFICATION BY OUT-OF-STATE BUSINESS**

An out-of-state business that enters Indiana shall provide the department a statement that the business is in Indiana for the purpose of responding to a disaster emergency. The statement shall include the name of the business, the state in which the business is domiciled, the principal business address of the business, the federal tax identification number of the business, the date the business entered Indiana, and the name of a contact person for the business. The information required can be submitted using Schedule IN-DRE, which can be obtained on the department's website at [www.in.gov/dor/4879.htm](http://www.in.gov/dor/4879.htm).

#### **EXEMPTIONS**

An out-of-state business that performs disaster emergency-related work during a disaster period is exempt from the following requirements during the disaster period:

- Paying any state or local taxes, including payroll taxes. For purposes of any state or local taxes measured by gross or net income or receipts, all activity of the out-of-state business

that is conducted in Indiana is disregarded with respect to any filing requirement of the tax, including a filing requirement for a unitary or combined group or a consolidated return of which the out-of-state business may be a part.

- Complying with any state or local business, occupational licensing, or registration requirements.
- Providing worker's compensation insurance under IC 22-3-5.
- Making employer contributions to the unemployment compensation system under IC 22-4-10.

An out-of-state employee is not considered to have established residency or a presence in Indiana and is not required to do any of the following during the disaster period:

- File and pay any state or local income taxes
- Be subject to income tax withholding
- File and pay any other state or local tax or fee during a disaster period

An out-of-state employee is exempt from state and local licensing and registration requirements with respect to disaster emergency-related work performed during a disaster period.

#### **PAYMENT OF TRANSACTION TAXES AND FEES**

Unless otherwise exempted, an out-of-state business or out-of-state employee shall pay transaction taxes and fees, including:

- Innkeepers' taxes
- Car rental taxes
- Fuel taxes
- Sales or use taxes on the purchase of materials or services for use or consumption during the disaster period

The previously listed taxes do not apply if the tax or purchase is otherwise exempt during a disaster period.

#### **EXAMPLES:**

An out-of-state business purchases items to be used in reconstruction of a bridge on a state highway. The purchase of those items would be exempt if they were purchased by the out-of-state business because the items would be exempt even if they were purchased during a period when no disaster emergency had been declared if the contractor receives an exemption certificate from the governmental entity that qualifies for the exemption.

An out-of-state employee purchases bread, eggs, and other food items to be prepared in his hotel room while in Indiana working for an out-of-state business. The food items are exempt from sales tax because they would be exempt even if they were purchased during a period when no disaster emergency had been declared.

An out-of-state employee arrives in Indiana and checks into a hotel for the duration of the disaster emergency. The charges for the room are subject to sales tax and innkeepers' taxes.



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