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# NOTICE 15-12

## KANSAS DISASTER UTILITIES RESPONSE ACT (JULY 1, 2015)

During the 2015 Legislative Session Senate Bill 109 was passed and signed into law. This Bill creates the Kansas Disaster Utilities Response Act. The purpose of the Act is to allow an out-of-state business to come into Kansas and work to prepare for, or make repairs after, a disaster which affects Kansas utilities without being subject to certain requirements and taxes normally imposed on a business operating in Kansas. Employees of these businesses are also exempt from certain requirements and taxes.

The Act defines "disaster or emergency-related work" to mean "work in preparation for a disaster and repairing, renovating, installing, building or rendering services or other business activities on or related to critical infrastructure that has been damaged, impaired or destroyed by any declared state disaster or emergency." Critical infrastructure includes such things as buildings, offices, line, poles, pipes, structures and equipment owned as used by operators of: (1) telecommunications, cable or other communications networks; (2) electric generation, transmission or distribution systems; (3) natural gas and natural gas liquids gathering, processing, storage, transmission or distribution systems; or (4) water pipelines.

The provisions of the Act become effective only after a state disaster or emergency has been declared by the Governor, a state or local disaster emergency has been declared by a proper county or city official, or after a Presidential declaration of a federal major disaster or emergency.

Under the terms of the Act, an out-of-state business conducting operations within Kansas for disaster or emergency related work is not considered to have established a level of presence requiring registration, licensing, or filing or remittance of state or local taxes. This means that an out-of-state business conducting operations within Kansas for disaster or emergency related work during a declared disaster or emergency period will not be subject to:

- Any and all state or local business licensing or registration requirements
- State or local taxes or fees including, but not limited to, state income and employer withholding taxes, unemployment insurance, state or local occupational licensing fees, sales and use tax or ad valorem tax on equipment used or consumed during any disaster response period; and
- Licensing and regulatory requirements of the state corporation commission or the secretary of state.

The Act specifically addresses some aspects of Kansas income tax for business. In subsection (b)(2) it states:

> (2) For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all disaster or emergency-related work of the out-of-state business that is conducted in this state pursuant to this section shall be disregarded with respect to any filing requirements for such tax, including the filing required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, revenue or receipts, the performance by an out-of-state business of any work in accordance with this section shall not be sourced to or shall not otherwise impact or increase the amount of income, revenue or receipts apportioned to this state.

An out-of-state employee who performs disaster or emergency related work in Kansas is not considered to have established residency or a presence in Kansas that would require the employee to file and pay state income taxes, or their employer to withhold Kansas income tax. Similarly, the employee would not be required to file and pay any other state or local tax or fee during the disaster response period.

Out-of-state businesses and employees are required to pay transaction taxes and fees on purchases for use or consumption in Kansas during the disaster response period, unless otherwise exempted. This includes, but is not limited to, fuel taxes, sales or use taxes on tangible personal property, materials or services, hotel taxes, and car rental taxes or fees.

The exemptions allowed by the Act last during the "disaster response period." This period extends from 10 days prior to the first day of a declared disaster or emergency to 60 days after the end of the declared disaster or emergency period. A longer period may be authorized by the Governor.

Out-of-state businesses and employees that remain in Kansas after the disaster response period will become subject to Kansas' normal standards for residency or doing business in Kansas, and are responsible for all tax requirements or obligations and registration, licensing, or filing requirements.

In order to administer the provisions of the Act, the Department of Revenue may require the out-of-state business or its affiliate(s) to provide a written statement that the business is in Kansas for disaster or emergency related purposes. The Department is required to maintain an annual record of all declared disasters and emergencies in Kansas.

Senate Bill 109 was effective upon publication in the Kansas Register on April 9, 2015.

## TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, **www.ksrevenue.org**. If you have questions about this Notice, please contact:

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