

INSURANCE CODE

TITLE 3. DEPARTMENT FUNDS, FEES, AND TAXES

SUBTITLE B. INSURANCE PREMIUM TAXES

CHAPTER 225. SURPLUS LINES INSURANCE PREMIUM TAX

Sec. 225.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Premium" means any payment made in consideration for insurance and includes:

- (A) a premium;
- (B) premium deposits;
- (C) a membership fee;
- (D) a registration fee;
- (E) an assessment;
- (F) dues; and
- (G) any other compensation given in

consideration for surplus lines insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.02, eff. September 28, 2011.

Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter applies to a surplus lines agent who collects gross premiums for surplus lines insurance for any risk in which this state is the home state of the insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.03, eff. September 28, 2011.

Sec. 225.003. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 981, including provisions relating to the applicability and enforcement of that chapter, rulemaking authority under that chapter, and definitions of terms applicable in that chapter, apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.004. TAX IMPOSED; RATE. (a) A tax is imposed on gross premiums for surplus lines insurance. The rate of the tax is 4.85 percent of the gross premiums.

(a-1) Consistent with 15 U.S.C. Section 8201 et seq., this state may not impose a premium tax on nonadmitted insurance premiums other than premiums paid for insurance in which this state

is the home state of the insured.

(b) Taxable gross premiums under this section are based on gross premiums written or received for surplus lines insurance placed through an eligible surplus lines insurer during a calendar year. Notwithstanding the tax basis described by this subsection, the comptroller by rule may establish an alternate basis for taxation for multistate and single-state policies for the purpose of achieving uniformity.

(c) If a surplus lines insurance policy covers risks or exposures only partially located in this state, and this state has not entered into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of surplus lines tax as authorized by Chapter 229, the tax is computed on the entire policy premium for any policy in which this state is the home state of the insured.

(d) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 18.11(1), eff. September 28, 2011.

(d-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 18.11(1), eff. September 28, 2011.

(e) Premiums on risks or exposures that are properly allocated to federal or international waters or are under the jurisdiction of a foreign government are not taxable in this state.

(f) If this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, taxes due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

(g) Premiums on risks or exposures under ocean marine insurance coverage of stored or in-transit baled cotton for export are not subject to the tax imposed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 4, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.04, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.11(1),

eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1043 (H.B. 2972), Sec. 1, eff. January 1, 2014.

Sec. 225.005. TAX EXCLUSIVE. The tax imposed by this chapter is a transaction tax collected by the surplus lines agent of record and is in lieu of any other transaction taxes on these premiums.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.05, eff. September 28, 2011.

Sec. 225.006. COLLECTION OF TAX BY AGENT. (a) Except as otherwise provided by this section, the surplus lines agent shall collect from the insured the tax imposed by this chapter at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance and the full amount of the gross premium charged by the eligible surplus lines insurer for the insurance.

(b) Subject to Subsection (c) and notwithstanding any other law, if a surplus lines agent places an insurance policy with a managing underwriter, as defined by Section 981.002, the managing underwriter shall collect, report, and pay the tax imposed by this chapter.

(c) A surplus lines agent and a managing underwriter may enter into an agreement to provide that the surplus lines agent is responsible for filing, reporting, collection, payment, and all other requirements imposed by this chapter and Chapter 981, including the requirement to pay the tax and file the tax report imposed by this chapter. An agreement under this subsection must be in writing and must be entered into at or before the time coverage is bound under the policy. The agreement may apply to multiple policies or all policies between a surplus lines agent and a managing underwriter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 837 (H.B. 3410), Sec. 1, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 920 (H.B. 1405), Sec. 1, eff. January 1, 2014.

Sec. 225.007. COLLECTED TAXES HELD IN TRUST. A surplus lines agent holds taxes collected under this chapter in trust. Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.008. TAX PAYMENT, REPORT, AND DUE DATE. (a) The tax imposed by this chapter is due and payable on or before March 1. A surplus lines agent shall file a tax report with the tax payment.

(b) A surplus lines agent shall pay the tax imposed by this chapter and file the report using forms prescribed by the comptroller.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.009. PREPAYMENT OF TAX. (a) A surplus lines agent shall prepay the tax imposed by this chapter when the amount of the accrued taxes due is equal to at least \$70,000.

(b) A surplus lines agent shall prepay the taxes using a form prescribed by the comptroller. The prepayment is due on or before the 15th day of the month following the month in which the amount of taxes described by this section accrues.

(c) The comptroller by rule may change the accrued tax amount for which prepayment is required under Subsection (a) and the prepayment deadline under Subsection (b).

(d) Notwithstanding Subsections (a), (b), and (c), if this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, the tax shall be allocated and reported in accordance with the terms of the agreement or compact.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 5, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.06,

eff. September 28, 2011.

Sec. 225.010. TAX ABSORPTION AND REBATES PROHIBITED. (a) A surplus lines agent may not absorb the tax imposed by this chapter.

(b) A surplus lines agent may not rebate all or part of the tax or the agent's commission as an inducement for insurance or for any other reason.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.011. CANCELED OR REWRITTEN INSURANCE CONTRACT. If a surplus lines insurance contract is canceled and rewritten, the additional premium for purposes of the tax imposed by this chapter is the premium amount that exceeds the unearned premium of the canceled contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.012. STATE AS PREFERRED CREDITOR. If the property of a surplus lines agent is seized as the result of an intermediate or final decision of a court in this state, or if the business of a surplus lines agent is suspended by the action of a creditor or turned over to an assignee, receiver, or trustee, the tax imposed by this chapter and penalties due the state from the agent are preferred claims and the state is a preferred creditor and must be paid in full.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.013. FAILURE TO PAY TAXES; CRIMINAL PENALTY. (a) A surplus lines agent who does not pay the tax imposed by this chapter on or before the due date required by this chapter or who fraudulently withholds, appropriates, or otherwise uses any portion of the tax commits the offense of theft, regardless of whether the surplus lines agent has or claims an interest in the tax.

(b) An offense under this section is punishable as provided by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.014. LIMITATION ON RULEMAKING. In adopting rules under this chapter, the comptroller may not adopt a rule that exceeds the requirements of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. [3315](#)), Sec. 6, eff. June 15, 2007.