

INSURANCE CODE

TITLE 3. DEPARTMENT FUNDS, FEES, AND TAXES

SUBTITLE B. INSURANCE PREMIUM TAXES

CHAPTER 226. UNAUTHORIZED AND INDEPENDENTLY PROCURED INSURANCE

PREMIUM TAX

SUBCHAPTER A. UNAUTHORIZED INSURANCE PREMIUM TAX

Sec. 226.001. DEFINITIONS. In this subchapter:

(1) "Insurer" has the meaning assigned by Section [101.002](#) and includes:

(A) an insurer that does not hold a certificate of authority in this state;

(B) an eligible surplus lines insurer; and

(C) an insurer that holds a certificate of authority in this state.

(2) "Premium" includes any consideration for insurance, including:

(A) a premium;

(B) a membership fee;

(C) an assessment; or

(D) dues.

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

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.005(a), eff. September 1, 2005.

Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer who charges gross premiums for insurance on a subject resident, located, or to be performed in this state.

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

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.005(b), eff. September 1, 2005.

Sec. 226.003. TAX IMPOSED; RATE. (a) A tax is imposed on each insurer that charges gross premiums subject to taxation under

this section. The rate of the tax is 4.85 percent of the gross premiums charged by the insurer.

(b) Except as otherwise provided by this section, in determining an insurer's taxable gross premiums, the insurer shall include any premium for insurance on a subject resident, located, or to be performed in this state.

(c) If a policy covers risks or exposures only partially located in this state, the tax is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state.

(d) In determining the amount of taxable premiums under Subsection (c), a premium, other than a premium properly allocated or apportioned and reported as a taxable premium of another state, is considered to be written on property or risks located or resident in this state if the premium:

(1) is written, procured, or received in this state;

or

(2) is for a policy negotiated in this state.

(d-1) Notwithstanding Subsections (b) through (d), the comptroller by rule may establish that all premiums are considered to be on risks located in this state:

(1) if the insured's home office or state of domicile or residence is located in this state; or

(2) to accommodate changes in federal statutes or regulations that would otherwise limit the comptroller's ability to directly collect the taxes due under this section.

(e) Insurance on a subject resident, located, or to be performed in this state is considered to be insurance procured, continued, or renewed in this state regardless of the location from which:

(1) the application is made;

(2) the negotiations are conducted; or

(3) the premiums are remitted.

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

(g) The following premiums are not subject to the tax imposed by this subchapter:

(1) premiums on insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Chapter 981 on which premium tax is paid in accordance with Chapter 225;

(2) premiums on an independently procured contract of insurance on which premium tax is paid in accordance with Subchapter B; and

(3) premiums on a contract of insurance written by an insurer that holds a certificate of authority in this state and that is authorized to write the contract.

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

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.005(c), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 7, eff. June 15, 2007.

Sec. 226.004. TAX EXCLUSIVE. The tax imposed by this subchapter is in lieu of all other insurance taxes.

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

Sec. 226.005. TAX PAYMENT; DUE DATE. (a) The tax imposed by this subchapter is due and payable not later than:

(1) March 1 after the end of the calendar year in which the insurance was effectuated, continued, or renewed; or

(2) another date prescribed by the comptroller.

(b) An insurer shall pay the tax imposed by this subchapter using a form prescribed by the comptroller.

(c) The tax imposed by this subchapter, if not paid when due, is a liability of the insurer, the insurer agent, and the insured.

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

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.005(d), eff. September 1, 2005.

Sec. 226.006. LIMITATION ON RULEMAKING. In adopting rules under this subchapter, 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. 8, eff. June 15, 2007.

SUBCHAPTER B. INDEPENDENTLY PROCURED INSURANCE PREMIUM TAX

Sec. 226.051. DEFINITIONS. In this subchapter:

(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) "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(6) "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 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. 18.07, eff. September 28, 2011.

Sec. 226.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insured who procures an independently procured insurance contract 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. 18.08, eff. September 28, 2011.

Sec. 226.053. TAX IMPOSED; RATE. (a) A tax is imposed on each insured at the rate of 4.85 percent of the premium paid for the insurance contract procured in accordance with Section [226.052](#).

(b) If an independently procured insurance policy covers risks or exposures only partially located in this state and this state has not joined a cooperative agreement, reciprocal agreement,

or compact with another state for the allocation of nonadmitted insurance taxes 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.

(b-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 18.11(2), eff. September 28, 2011.

(c) Premiums for individual life or individual disability insurance are not included in determining an insured's taxable premiums.

(d) If this state enters into a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax due on multistate policies shall be allocated and reported in accordance with 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. 9, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.09, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.11(2), eff. September 28, 2011.

Sec. 226.054. TAX PAYMENT BY CERTAIN INSUREDS. (a) Except as provided by Section 226.055, the tax imposed by this subchapter is due and payable not later than:

(1) May 15 after the end of the calendar year in which the insurance was procured, continued, or renewed; or

(2) another date prescribed by the comptroller.

(b) An insured who fails to withhold from the premium the amount of tax imposed by this subchapter is liable for the amount of the tax and shall pay the tax due.

(c) The insured shall file a tax report and pay the tax.

(d) The insured may designate another person to file the report and pay the tax.

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

Sec. 226.055. TAX PAYMENT BY CERTAIN CORPORATIONS. The amount of tax due and payable under this subchapter by a corporation that files a franchise tax report shall be reported directly to the comptroller and is due:

- (1) at the time the franchise tax report is due; or
- (2) on another date prescribed by the comptroller.

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

Sec. 226.056. EFFECT ON OTHER LAW. Sections 226.051-226.054 do not abrogate or modify any other provision of this chapter or Chapter [101](#).

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

Sec. 226.057. LIMITATION ON RULEMAKING. In adopting rules under this subchapter, 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. 10, eff. June 15, 2007.