

## **OKLAHOMA SURPLUS LINE INSURANCE REFORM SUPPLEMENTAL ANNOUNCEMENT AND BULLETIN**

**TO:** All Licensed Surplus Lines Brokers and Producers;  
All Oklahoma Domiciled Surplus Lines Carriers;  
All U.S. Based Surplus Lines Carriers Domiciled in States Other than Oklahoma;  
All Alien Surplus Lines Carriers Listed in the NAIC Quarterly Listing; and  
All Insureds Independently Procuring Surplus Lines Insurance.

**FROM:** The Oklahoma Insurance Department.

**REGARDING:** Implementation of the Federal Nonadmitted and Reinsurance Reform Act ("NRRA") and related Oklahoma Legislation pertaining to Surplus Line Premium Tax Allocation and Payment under 36 O.S. §§ 1100-1020, as amended by the Oklahoma Legislature during its 2012 Legislative session.

**DATE:** September 13, 2012.

### **Purpose of this Supplemental Announcement and Bulletin.**

The purpose of this Supplemental Announcement and Bulletin is to outline regulatory changes that will affect the premium taxation of nonadmitted (surplus line) insurance in Oklahoma as a result of modifications and clarifications made to the Oklahoma Unauthorized Insurance and Surplus Lines Act by the 2012 Oklahoma legislature. To that end, it builds on and develops the Oklahoma Surplus Line Insurance Reform Announcement or Bulletin dated September 30, 2011 issued by the Insurance Commissioner.

For nonadmitted insurance business placed on or after the financial quarter beginning October 1, 2011, where the insured's home state is Oklahoma, the following information is provided by the Department as a further guide to surplus lines brokers, producers, insurers and insureds as these new laws are put into practice by Oklahoma and all the states under current conditions and circumstances.

### **The General Purpose of NRRA.**

NRRA encourages the states to join a compact or some other agreement which would usher in uniform, nationwide collection and distribution of premium taxes to states based on allocation according to location of risk and tax computation based on the recipient state's tax rate. NRRA envisions that such collection, computation and allocation would be carried out by some entity, such as a clearinghouse, created by the contemplated compact. If a Home State has joined a compact, it is responsible for forwarding the funds to the compact for allocation. If the Home State has not joined a compact, then that state must be guided by NRRA and the legislation that state has passed in response to NRRA. NRRA does not mandate that a state join a particular compact or clearinghouse, or that it join such an entity at all.

**The Oklahoma Statute Gives the Insurance Commissioner Discretion, and Exercising that Discretion, the Insurance Commissioner Has Elected Not to Join a Compact or Clearinghouse at this Time.**

The overriding intent of Oklahoma's surplus line legislation is that the Insurance Commissioner has the discretion to join compacts such as the NIMA or SLIMPACT groups. *See* 36 O.S. § 1100.2. A central feature of these compacts is an allocation model for multi-state risks of tax payouts from a clearinghouse to states based on the location and/or quantity of risk in each state, computed according to a formula based on each affected state's tax rate for a particular surplus line. If, however, in the exercise of the Oklahoma Insurance Commissioner's discretion, he or she decides not to join any compact, the pro rata blended model does not even come into play. The Oklahoma Insurance Commissioner has exercised and continues to exercise his discretion not to join any of the currently existing multi-state groups or compacts. Other states have made a similar choice. The Insurance Commissioner issued the previous Oklahoma Surplus Line Insurance Reform Announcement or Bulletin dated September 30, 2011, to explain this decision and its meaning for the surplus lines industry's payment of premium tax to the Oklahoma Insurance Department.

**When Should Surplus Lines Brokers and/or Companies Start to Pay the Premium Tax as Provided in this Bulletin Where Oklahoma is the Home State ?**

After initially adopting the Unauthorized Insurers and Surplus Lines Insurance Act in 2011, the Oklahoma legislature amended the Act in 2012 to clarify certain of its provisions, including 36 O.S. § 1115(B) which provides in pertinent part “Where Oklahoma is the home state of the insured and the insurance covers properties, risks or exposures located or to be performed both in and out of Oklahoma, the sum payable to the Oklahoma Insurance Commissioner shall be computed based on an amount equal to six percent (6%) of the total gross premiums whether the properties, risks or exposures are located or to be performed inside or outside Oklahoma...”

Title 36, Section 1100 (B) provides that the purpose and effect of the Oklahoma Unauthorized Insurers and Surplus Lines Insurance Act relates back to the effective date of implementation of the federal NRRRA Act of 2010. NRRRA's effective date is July 21, 2011. To allow surplus line insurers and brokers time to transition and adjust to the new Oklahoma surplus lines laws of 2011 as amended in 2012 and the changed landscape they create, in the exercise of his discretion and in the interests of certainty, the Insurance Commissioner declares the date of implementation by the Department of premium tax reporting in the manner prescribed by the Oklahoma Unauthorized Insurance and Surplus Lines Act to be the financial quarter beginning October 1, 2011.

**How Should Surplus Lines Brokers and/or Companies Compute and Pay the Premium Tax where Oklahoma is the Home State?**

When Oklahoma is the Home State of the insured, one hundred percent of the gross premiums are taxable in Oklahoma with no allocation of the tax to other states. It is the intent of the Insurance Commissioner to issue additional announcements or bulletins if and when Oklahoma begins participating in a tax sharing arrangement. Until the Insurance Commissioner may exercise his

discretion under Oklahoma law to enter into any such an arrangement, the Oklahoma tax rate of 6% of the total gross premiums is imposed when Oklahoma is the insured's Home State and the effective date of the insurance contract or renewal is on or after the financial quarter beginning October 1, 2011.

**What is the Insured's Home State for Purposes of a Particular Placement?**

Oklahoma is the insured's Home State if the insured maintains its principal place of business in Oklahoma or, in the case of an individual, the individual's principal residence is in Oklahoma. *See* 36 O.S. § 1100.1 (2). If Oklahoma is considered the insured's "Home State," only Oklahoma can tax the gross premiums that are paid for coverage at Oklahoma's 6% surplus premium tax rate.

**How Should the Surplus Lines Broker or Company Report Premium Tax When Oklahoma is the Home State?**

The surplus line broker or company should continue to file the Broker Quarterly Summary Report ("the Report") form that is on the Oklahoma Insurance Department's web site at the times and in the same manner that surplus lines premium taxes were previously reported.

**Questions?**

Please call the Premium Tax Office of the Financial Division of the Oklahoma Insurance Department at 521-3966.