OKLAHOMA SURPLUS LINE INSURANCE REFORM BULLETIN

TO: All Licensed Surplus Lines Brokers;
All Oklahoma Domiciled Surplus Lines Carriers;
All U.S. Based Surplus Lines Carriers Domiciled in Another State;
All Alien Surplus Lines Carriers Listed in the NAIC Quarterly Listing; and
All Insureds Independently Procuring Surplus Lines Insurance.

FROM: 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. §§ 1100-1018.

DATE: September 30, 2011.

<u>Purpose of this Announcement or Bulletin.</u>

The purpose of this bulletin is to outline regulatory changes that will affect the premium taxation of nonadmitted (surplus line) insurance in Oklahoma. The Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), 15 U.S.C.A. § 8201 et seq., provides that only an insured's "Home State" may require the payment of premium tax for nonadmitted insurance. *See* also 36 O.S. § 1101.1(2). "Nonadmitted insurance" as defined in 36 O.S. § 1101.1(1) applies only to property and casualty insurance (with the exception of workers compensation insurance).

NRRA and its Oklahoma companion legislation are now in effect. For nonadmitted insurance business placed on or after July 21, 2011, the following information is provided by the Department as a guide to surplus line brokers, insurers and insureds as these new laws are put into practice by Oklahoma and all the states under current conditions and circumstances.

<u>The General Purpose of NRRA.</u>

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 receiving state's tax rate. NRRA envisions such collection, computation and allocation would be carried out by some entity, such as a clearinghouse, created by the contemplated compact. If the 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 it 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, in the exercise of the Oklahoma Insurance Commissioner's discretion, he decides not to join any compact, the pro rata paradigm does not even come into play, and -- in such circumstances -- the default mode is payment of all premium taxes at 6% to Oklahoma, when Oklahoma is the Home State, regardless of risk location. In this context, 36 O.S. § 1115(B) and (D) -- which reference a pro rata rate calculation – must be construed only in the greater context of the Commissioner's decision whether or not to participate in a multi-state compact. *See especially*, 36 O.S. § 1115(H), as referenced in Section 1115(B). At this time the Insurance Commissioner has exercised his discretion not to join any of the currently existing multi-state groups or compacts. Other states have made a similar choice.

At this Time, 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 Oklahoma Department of Insurance 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 such an arrangement, the Oklahoma tax rate of 6% is imposed when Oklahoma is the insured's Home State for new and renewal policies with an effective date on or after July 21, 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 here. If Oklahoma is considered the insured's "Home State," only Oklahoma can tax the gross premiums that are paid for coverage at its surplus premium tax rate of 6%.

What is the Time Line for Application of these Rules?

Policies with an effective date before July 21, 2011, are still subject to tax as effective before NRRA went into effect on that date. Prior law will also apply to any modification of such a policy during the policy period, such as all endorsements (including risk and premium bearing endorsements), installment payments and premium audits. New and renewal policies with an effective date between July 21, 2011 and August 25, 2011, and any modifications thereto, will be subject only to the federal NRRA statute. New and renewal policies with an effective date on or after August 25, 2011, and any modifications thereto, will also be subject to Oklahoma law if Oklahoma is the Home State of the insured. Regardless, a broker or insurer with a new surplus lines policy with an effective date on or after July 21, 2011 should follow and be guided by this announcement or bulletin.

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. Payment of the premium tax to Oklahoma as the Home State must be as directed above. The first Report after the issuance of this bulletin or announcement is due October 31, 2011.

Questions?

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