

1 ENGROSSED HOUSE AMENDMENT

2 TO

3 ENGROSSED SENATE BILL NO. 438

By: Sparks of the Senate

and

Mulready of the House

[insurance premium taxes - surplus lines coverage -
exemption - effective date]

AMENDMENT NO. 1. Replace the stricken title, enacting clause and
entire bill and insert

"An Act relating to insurance premium taxes; amending
36 O.S. 2011, Section 1115, as last amended by
Section 2, Chapter 49, O.S.L. 2015 (36 O.S. Supp.
2016, Section 1115), which relates to premium tax on
surplus lines coverage; creating exemption for
certain policies; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1115, as
last amended by Section 2, Chapter 49, O.S.L. 2015 (36 O.S. Supp.
2016, Section 1115), is amended to read as follows:

Section 1115. A. Where Oklahoma is the home state of the
insured, every person licensed pursuant to Section 1106 of this
title shall collect and pay as provided in this section a sum for
premium tax based on the total gross premiums charged in connection

1 with any broker-procured surplus lines insurance, less any return
2 premiums, for surplus lines insurance sold to the Oklahoma home-
3 state insureds by the surplus lines broker or licensee.

4 B. Where Oklahoma is the home state of the insured and the
5 insurance covers properties, risks or exposures located or to be
6 performed both in and out of Oklahoma, the sum payable to the
7 Oklahoma Insurance Commissioner shall be computed based on an amount
8 equal to six percent (6%) of the total gross premiums whether the
9 properties, risks or exposures are located or to be performed inside
10 or outside Oklahoma. Any such unearned gross premium credited by
11 the state to the surplus lines broker or licensee shall be returned
12 to the policyholder by the broker or licensee. The surplus lines
13 licensee or broker is prohibited from rebating, for any reason, any
14 part of the tax.

15 C. Where Oklahoma is the home state of the insured, gross
16 premiums charged for independently procured insurance, less any
17 return premiums, are subject to a premium tax at the rate of six
18 percent (6%) payable to the Oklahoma Insurance Commissioner, whether
19 the properties, risks or exposures are located or to be performed
20 inside or outside Oklahoma.

21 D. The Insurance Commissioner is authorized, in the exercise of
22 his or her sole discretion and judgment, to participate in the
23 Nonadmitted Insurance Multi-State Agreement or any other multistate
24 agreement or compact with the same function and purpose for the

1 function of collecting and disbursing to reciprocal states any funds
2 collected pursuant to the Unauthorized Insurers and Surplus Lines
3 Insurance Act applicable to other properties, risks or exposures
4 located or to be performed outside of Oklahoma. Until such time as
5 the Insurance Commissioner may, while not being required to, join
6 such multistate agreement or compact, premium taxes relating to
7 Oklahoma home-state insureds shall continue to be paid and accounted
8 for by nonadmitted insurers through their surplus lines licensees
9 and brokers as provided in subsections A through C of this section.

10 E. When the surplus lines coverage of an Oklahoma home-state
11 insured covers properties, risks or exposures located only in
12 Oklahoma, the surplus lines licensee or broker or self-procuring
13 insured shall pay the surplus lines premium tax payable on such
14 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

15 F. Should the Insurance Commissioner exercise his or her sole
16 discretion and judgment and decide to join the Nonadmitted Insurance
17 Multi-State Agreement or any other multistate agreement or compact
18 with the same function and purpose, the Insurance Commissioner is
19 authorized in such event to establish a uniform, statewide rate of
20 taxation applicable to lines of nonadmitted insurance. This rate
21 shall encompass all existing rates of taxation, fees and assessments
22 imposed by this state, pursuant to subsections A through C of this
23 section and the Insurance Commissioner shall document the method by
24 which the statewide rate is calculated. The Insurance Commissioner

1 is authorized to receive any monies obtained as premium tax received
2 through any multistate agreement he or she may in the future in his
3 or her discretion choose to join and then disburse such funds as
4 provided by the Insurance Code and other applicable Oklahoma law.

5 G. Should the Insurance Commissioner exercise his or her sole
6 discretion and decide to join the Nonadmitted Insurance Multi-State
7 Agreement or any other multistate agreement or compact with the same
8 function and purpose, the Insurance Commissioner is authorized in
9 such circumstances to utilize or adopt any allocation schedule
10 included in the Nonadmitted Insurance Multi-State Agreement or any
11 other multistate agreement or compact the Insurance Commissioner may
12 enter in the exercise of his or her sole discretion and judgment
13 which schedule has the function and purpose of allocating risk and
14 computing the tax due on the portion of premium attributable to each
15 risk classification and to each state where properties, risks or
16 exposures are located.

17 H. Policies sold to federally recognized Indian tribes shall be
18 reported as provided in Section 1107 of this title; however, these
19 policies shall be exempt from the surplus line premium tax to the
20 extent that the Insurance Commissioner can identify that coverage is
21 for risks which are wholly owned by a tribe and located within
22 Indian Country, as defined in Section 1151 of Title 18 of the United
23 States Code.

1 I. The surplus line premium tax on insurance on motor transit
2 operations conducted between this and other states shall be paid on
3 the total premium charged on all surplus line insurance less:

4 1. The portion of the premium charged for operations in other
5 states taxing the premium of an insured where Oklahoma is the home
6 state; or

7 2. The premium for operations outside of this state of an
8 insured maintaining its headquarters office outside of this state
9 and branch office in this state.

10 J. Flood insurance policies where Oklahoma is the home state of
11 the insured and the insurance covers properties, risks, or exposures
12 located in Oklahoma shall be exempt from the surplus line premium
13 tax.

14 K. Policies sold to any city or town in this state,
15 incorporated pursuant to law, shall be exempt from the surplus lines
16 premium tax.

17 SECTION 2. This act shall become effective November 1, 2017."
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1 Passed the House of Representatives the 18th day of April, 2017.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2017.

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9 Presiding Officer of the Senate
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1 ENGROSSED SENATE
2 BILL NO. 438

By: Sparks of the Senate

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4 Mulready of the House

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6 [insurance premium taxes - surplus lines coverage -
7 exemption - effective date]
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9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1115, as
11 last amended by Section 2, Chapter 49, O.S.L. 2015 (36 O.S. Supp.
12 2016, Section 1115), is amended to read as follows:

13 Section 1115. A. Where Oklahoma is the home state of the
14 insured, every person licensed pursuant to Section 1106 of this
15 title shall collect and pay as provided in this section a sum for
16 premium tax based on the total gross premiums charged in connection
17 with any broker-procured surplus lines insurance, less any return
18 premiums, for surplus lines insurance sold to the Oklahoma home-
19 state insureds by the surplus lines broker or licensee.

20 B. Where Oklahoma is the home state of the insured and the
21 insurance covers properties, risks or exposures located or to be
22 performed both in and out of Oklahoma, the sum payable to the
23 Oklahoma Insurance Commissioner shall be computed based on an amount
24 equal to six percent (6%) of the total gross premiums whether the

1 properties, risks or exposures are located or to be performed inside
2 or outside Oklahoma. Any such unearned gross premium credited by
3 the state to the surplus lines broker or licensee shall be returned
4 to the policyholder by the broker or licensee. The surplus lines
5 licensee or broker is prohibited from rebating, for any reason, any
6 part of the tax.

7 C. Where Oklahoma is the home state of the insured, gross
8 premiums charged for independently procured insurance, less any
9 return premiums, are subject to a premium tax at the rate of six
10 percent (6%) payable to the Oklahoma Insurance Commissioner, whether
11 the properties, risks or exposures are located or to be performed
12 inside or outside Oklahoma.

13 D. The Insurance Commissioner is authorized, in the exercise of
14 his or her sole discretion and judgment, to participate in the
15 Nonadmitted Insurance Multi-State Agreement or any other multistate
16 agreement or compact with the same function and purpose for the
17 function of collecting and disbursing to reciprocal states any funds
18 collected pursuant to the Unauthorized Insurers and Surplus Lines
19 Insurance Act applicable to other properties, risks or exposures
20 located or to be performed outside of Oklahoma. Until such time as
21 the Insurance Commissioner may, while not being required to, join
22 such multistate agreement or compact, premium taxes relating to
23 Oklahoma home-state insureds shall continue to be paid and accounted
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1 for by nonadmitted insurers through their surplus lines licensees
2 and brokers as provided in subsections A through C of this section.

3 E. When the surplus lines coverage of an Oklahoma home-state
4 insured covers properties, risks or exposures located only in
5 Oklahoma, the surplus lines licensee or broker or self-procuring
6 insured shall pay the surplus lines premium tax payable on such
7 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

8 F. Should the Insurance Commissioner exercise his or her sole
9 discretion and judgment and decide to join the Nonadmitted Insurance
10 Multi-State Agreement or any other multistate agreement or compact
11 with the same function and purpose, the Insurance Commissioner is
12 authorized in such event to establish a uniform, statewide rate of
13 taxation applicable to lines of nonadmitted insurance. This rate
14 shall encompass all existing rates of taxation, fees and assessments
15 imposed by this state, pursuant to subsections A through C of this
16 section and the Insurance Commissioner shall document the method by
17 which the statewide rate is calculated. The Insurance Commissioner
18 is authorized to receive any monies obtained as premium tax received
19 through any multistate agreement he or she may in the future in his
20 or her discretion choose to join and then disburse such funds as
21 provided by the Insurance Code and other applicable Oklahoma law.

22 G. Should the Insurance Commissioner exercise his or her sole
23 discretion and decide to join the Nonadmitted Insurance Multi-State
24 Agreement or any other multistate agreement or compact with the same

1 function and purpose, the Insurance Commissioner is authorized in
2 such circumstances to utilize or adopt any allocation schedule
3 included in the Nonadmitted Insurance Multi-State Agreement or any
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5 enter in the exercise of his or her sole discretion and judgment
6 which schedule has the function and purpose of allocating risk and
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12 policies shall be exempt from the surplus line premium tax to the
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15 Indian Country, as defined in Section 1151 of Title 18 of the United
16 States Code.

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18 operations conducted between this and other states shall be paid on
19 the total premium charged on all surplus line insurance less:

20 1. The portion of the premium charged for operations in other
21 states taxing the premium of an insured where Oklahoma is the home
22 state; or
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2. The premium for operations outside of this state of an insured maintaining its headquarters office outside of this state and branch office in this state.

J. Flood insurance policies where Oklahoma is the home state of the insured and the insurance covers properties, risks, or exposures located in Oklahoma shall be exempt from the surplus line premium tax.

K. Policies sold to any city or town in this state,
incorporated pursuant to law, shall be exempt from the surplus lines
premium tax.

SECTION 4. This act shall become effective November 1, 2017.

Passed the Senate the 22nd day of March, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2017.

Presiding Officer of the House
of Representatives