



## Ohio Revised Code

### Section 3905.36 Taxing firms dealing with unauthorized foreign insurers; waiver of penalty and interest charges; surplus lines brokers.

Effective: September 10, 2012

Legislation: House Bill 487 - 129th General Assembly

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(A) Every insured association, company, corporation, or other person that enters, directly or indirectly, into any independent procurement or direct placement agreement with any insurance company, association, individual, firm, underwriter, or Lloyd's, not authorized to do business in this state, whereby the insured shall procure, continue, or renew contracts of insurance with such unauthorized insurance company, association, individual, firm, underwriter, or Lloyd's, for which insurance there is a gross premium, shall file the details of the transaction annually, on or before the thirty-first day of March, and shall at the same time pay to the treasurer of state, or to the superintendent of insurance upon the mutual agreement of the superintendent and the treasurer, a tax of five per cent of such gross premium, after a deduction for return premium, if any, as calculated in the prescribed format or in compliance with any requirements of the compact entered into by the superintendent pursuant to division (D) of section 3905.33 of the Revised Code. An insurer may submit the required details of the transaction and remit the tax payment on behalf of an insured.

All taxes collected under this section shall be paid into the general revenue fund. If the tax is not paid when due, the tax shall be increased by a penalty of twenty-five per cent. An interest charge computed as set forth in section 5725.221 of the Revised Code shall be made on the entire sum of the tax plus penalty, which interest shall be computed from the date the tax is due until it is paid. For purposes of this section, payment is considered made when it is received by the treasurer or the superintendent, irrespective of any United States postal service marking or other stamp or mark indicating the date on which the payment may have been mailed.

The superintendent of insurance, in the superintendent's sole discretion, may waive the twenty-five per cent penalty and interest charge thereon for a first-time, inadvertent nonpayment of the tax when due if the nonpayment is reported immediately upon discovery and the outstanding tax is thereafter immediately paid to the superintendent.

(B) Each person licensed under section 3905.30 of the Revised Code shall pay to the treasurer of



state, or to the superintendent of insurance upon the mutual agreement of the superintendent and the treasurer, on or before the thirty-first day of March of each year, five per cent of the balance of the gross premiums charged for insurance placed or procured under the license after a deduction for return premiums in the prescribed format or in compliance with any requirements of the compact entered into by the superintendent pursuant to division (D) of section 3905.33 of the Revised Code. The tax shall be collected from the insured by the surplus lines broker who placed or procured the policy of insurance at the time the policy is delivered to the insured. No license issued under section 3905.30 of the Revised Code shall be renewed until payment is made. If the tax is not paid when due, the tax shall be increased by a penalty of twenty-five per cent. An interest charge computed as set forth in section 5725.221 of the Revised Code shall be made on the entire sum of the tax plus penalty, which interest shall be computed from the date the tax is due until it is paid. For purposes of this section, payment is considered made when it is received by the treasurer or the superintendent, irrespective of any United States postal service marking or other stamp or mark indicating the date on which the payment may have been mailed.

The superintendent, in the superintendent's sole discretion, may waive the twenty-five per cent penalty and interest charge thereon for a first-time, inadvertent nonpayment of the tax when due if the nonpayment is reported immediately upon discovery and the outstanding tax is thereafter immediately paid to the superintendent.

(C) This section does not apply to:

- (1) An insured otherwise exempt from the payment of premium or franchise taxes under state or federal law;
- (2) Attorneys-at-law acting on behalf of their clients in the adjustment of claims or losses;
- (3) Transactions involving policies issued by a captive insurer. For this purpose, a "captive insurer" means any of the following:
  - (a) An insurer owned by one or more individuals or organizations, whose exclusive purpose is to insure risks of one or more of the parent organizations or individual owners and risks of one or more affiliates of the parent organizations or individual owners;



(b) In the case of groups and associations, insurers owned by the group or association whose exclusive purpose is to insure risks of members of the group or association and affiliates of the members;

(c) Other types of insurers, licensed and operated in accordance with the captive insurance laws of their jurisdictions of domicile and operated in a manner so as to self-insure risks of their owners and insureds.

(4) Professional or medical liability insurance procured by a hospital organized under Chapter 3701. of the Revised Code;

(5) Insurance with an initial policy period of more than three years and that is procured to cover known events related to environmental remediation that occurred prior to the effective date of that insurance;

(6) Insurance procured on behalf of an entity that manufactures, packages, and sells, as more than fifty per cent of the entity's business, pharmaceutical products for human use where the production, packaging, and sale of such products are subject to regulation by an agency of the United States;

(7) A political subdivision or any combination or consortium of two or more political subdivisions.

(D) As used in this section:

(1) "Political subdivision" means any county; municipal corporation; township; township police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; a district organized under section 2151.65 of the Revised Code; a combined district organized under sections 2151.65 and 2152.41 of the Revised Code; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under section 6131.52 of the Revised Code; a union cemetery district; a county school financing district; a city, local, exempted village, cooperative education, or joint vocational school district; or a regional



student education district created under section 3313.83 of the Revised Code, any public division, district, commission, authority, department, board, officer, or institution of any one or more of those political subdivisions, that is entirely or substantially supported by public tax moneys.

(2) "Municipal corporation" means all municipal corporations, including those that have adopted a charter under Article XVIII, Ohio Constitution.