



**THE SURPLUS LINE ASSOCIATION  
OF CALIFORNIA**

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**BULLETIN #1165**

**RE: WAIVER OF PENALTY FOR NON-TIMELY PAYMENTS OF SURPLUS LINE PREMIUM TAXES**

The California Department of Insurance (CDI) has issued the following notice to all surplus line brokers restating the California Insurance Code (CIC) requirements for mandatory participation in the electronic funds transfer (EFT) for the remittance of the 3% surplus line premium tax. All brokers who paid the previous year's taxes in an amount exceeding \$20,000 must participate in the EFT program. Failure to participate in the EFT program results in a 10% penalty fee for surplus line brokers.

Per CIC Sections 1775.4(e) and 1775.5(b), surplus line brokers may be relieved of the penalty for non-compliance with the timeliness requirement. Waivers may be granted due to reasonable cause or circumstances beyond the insurer or surplus line broker's control. The CDI warns that not being aware of the EFT timeliness requirements or staffing problems are not considered reasonable cause or circumstance beyond the surplus line broker's control. See California Code of Regulations, Title 10, Section 2330 for the CDI explanation of the penalty fee waiver.

Sincerely,

Theodore M. Pierce  
Executive Director

Enclosures

**DEPARTMENT OF INSURANCE**

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**NOTICE****TO:** All Admitted Insurers and Surplus Line Brokers**DATE:** October 27, 2008**SUBJECT:** Guidelines for Waiver of Penalty for Non-Use of Electronic Fund Transfer (EFT) and for Non-Timely Payment of Taxes**EFT Payments**

Pursuant to California Insurance Code (CIC) Sections 1775.8(c)(1) and 12976.5(c)(1), any surplus line broker or insurer required to remit taxes by EFT who remits those taxes by means other than an approved EFT method shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

Insurers and surplus line brokers are required to participate in the EFT program if their annual taxes for the preceding year exceeded twenty thousand dollars (\$20,000). Failure to participate in the EFT program results in a penalty fee for insurers and surplus line brokers. Per CIC Sections 1775.8(c)(2), 12976.5(c)(2), or California Revenue and Taxation Code Section 12602(c)(2), insurers or surplus line brokers may be relieved of the penalty for failure to make payment by EFT. All insurers and surplus line brokers are also reminded that while Fedwire is an appropriate EFT method, electronic funds transfers may be made by Fedwire **only if prior approval is obtained from the California Department of Insurance (CDI)**.

**Non-Timely Payments**

Pursuant to CIC Sections 1775.4(e) and 1775.5(b), a penalty of 10 percent of the amount of the payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required.

Non-compliance with the timeliness requirements results in a penalty fee for insurers and surplus line brokers. Per CIC Sections 1775.4(e) and 1775.5(b), surplus lines brokers may be relieved of the penalty for non-compliance with the timeliness requirement. (Insurers who are non-compliant with the timeliness requirement are required to send their waiver request to the Board of Equalization (BOE) pursuant to California Revenue and Taxation Code Section 12636. The BOE may be contacted at: John Eng, Board of Equalization, Excise Tax Division, 450 N Street, MIC-56, Sacramento, CA 95814.)

## **Waiver of Penalties**

Waivers may be granted due to reasonable cause or circumstances beyond the insurer or surplus line broker's control. To define and make clear situations that constitute reasonable cause, the CDI has promulgated regulations ([California Code of Regulations, Title 10, Section 2330](#)).

In general, not being aware of the EFT and/or timeliness requirements is not considered reasonable cause or a circumstance beyond the insurer or surplus line broker's control. In addition to the statutes, the EFT and timeliness requirements are stated in the filing instructions included with the tax forms, and these requirements are also incorporated into the CDI's Annual Tax Return Information Notice which is sent to all admitted insurers, surplus line brokers, and other interested parties. In most cases, waivers of penalties are not granted in situations involving staffing issues. Prudent business practices will ensure that back-up procedures are in place when unexpected personnel issues surface.

If you have any questions regarding this Notice, please contact Roger Bankston at (916) 492-3042.

**CALIFORNIA CODE OF REGULATIONS  
TITLE 10. INVESTMENT  
CHAPTER 5. INSURANCE COMMISSIONER  
SUBCHAPTER 3. INSURERS**

**ARTICLE 6.5. GUIDELINES FOR WAIVER OF PENALTY FOR NON-USE OF  
ELECTRONIC FUNDS TRANSFER OR FOR NON-TIMELY PAYMENT OF TAXES**

**§ 2330.1. Electronic Funds Transfer Penalties.**

Insurers and surplus line brokers (hereafter, "taxpayers") are required to make payment by Electronic Funds Transfer ("EFT") if their annual taxes exceed twenty thousand dollars (\$20,000). If they make payment by some method other than EFT or the payment is not timely, they will be assessed a ten percent penalty plus interest on the amount due unless the penalty is waived as set forth under Sections 2330.3 and 2330.4. If taxpayers make payment by some method other than EFT and the payment is not timely, taxpayers will be assessed a twenty percent penalty plus interest on the amount due unless the penalty is waived as set forth under Sections 2330.3 and 2330.4. .

**§ 2330.3. Waiver of Penalty for Failure to Pay Taxes by EFT.**

(a) The penalty set forth above in Section 2330.1 may be waived if the taxpayer's failure to pay taxes by EFT is due to reasonable cause or circumstances beyond the taxpayer's control.  
(b) In order for the penalty to be waived, the taxpayer seeking a waiver must file with the Insurance Commissioner a written request under penalty of perjury, stating the facts upon which a request for a waiver is based. Each request for a waiver shall be evaluated on its own merits.  
(c) The request for a waiver shall be granted if the taxpayer fails to make payment by electronic funds transfer under any of the following circumstances:

- (1) The death or serious illness of the taxpayer or death or serious illness of a member of the taxpayer's immediate family.
- (2) The death or serious illness of the person who prepares the payment on behalf of the taxpayer.
- (3) Natural disaster.
- (4) Incorrect advice given to the taxpayer by an employee of the Commissioner.
- (5) Involuntary bankruptcy.
- (6) An attachment placed against the taxpayer's bank account without the taxpayer's knowledge.
- (7) The taxpayer's books and records are impounded by court order or are in the hands of a federal or state agency and are unavailable for use by the taxpayer. However, these books and records must pertain to the same period of time as the tax return or somehow relate to the payment of the tax.
- (8) If the State of California does not suffer any financial loss as a result of the payment method and the taxpayer was not previously notified of the electronic funds transfer method. The taxpayer shall work with the Department of Insurance to establish an electronic funds transfer method.

(9) Other situations that clearly demonstrate that the non-use of EFT is beyond the taxpayer's control.

**§ 2330.4. Waiver of Penalty for Failure to Timely Make Payment.**

(a) The penalty set forth above in Section 2330.1 may be waived if the surplus line broker fails to make a timely payment under any of the circumstances set forth under Section 2330.3(c)(1) through (7) above. A surplus line broker may also be relieved of the penalty for late payment if:

- (1) the surplus line broker failed to receive a tax return because of a change of address and the Department has been properly informed of the change of address.
- (2) for any other reason, the surplus line broker has not received a tax return from the Department where the Department is at fault.
- (3) other situations that clearly demonstrate that failure to make timely payment is beyond the surplus line broker's control.

**§ 2330.5. Filing for Relief.**

(a) Any surplus line broker seeking to be relieved of the penalty provided in Section 2330.1 for failure to pay taxes by EFT and/or failure to timely make a payment shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

(b) Any insurer seeking to be relieved of the penalty provided in Section 2330.1 for failure to pay taxes by EFT shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

(c) Any insurer seeking to be relieved of the penalty provided in Section 2330.1 for failure to timely make a payment shall file with the California Board of Equalization a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.