

THE SURPLUS LINE ASSOCIATION

OF CALIFORNIA

315 MONTGOMERY STREET

SAN FRANCISCO 94104

A. L. LATHROP
MANAGER

A. B. HERRICK
ASSISTANT MANAGER

SAN FRANCISCO
986-0703
LOS ANGELES
1541 WILSHIRE BLVD
463-3781

May 6, 1969

No. 307

BULLETIN TO ALL MEMBERS:

RE: FEDERAL TAX

At the last meeting of the Executive Committee, it was recommended that in order to secure uniformity amongst our members, the following methods should be adopted:

1. The companies in England should follow the same procedure as they do for the rest of the country and pay the Federal excise tax on their share of the premium where such tax is due the U. S. Government.
2. A copy of the opinion of our Association's legal counsel is attached. From this it appears that from a practical matter the obligations of the surplus line broker generally are satisfied if the return of the Federal excise tax paid by the assured is made through the originating producer.

It should be noted that the Association is acting strictly in an advisory basis and the member is under no compulsion to follow the suggested procedure.

This appears to end the matter insofar as the Association is concerned, but if we can be of assistance obviously the facilities of our office are available.

Very truly yours


A. B. Herrick
Assistant Manager

ABH:eb

Enc.

JOHN R. MALONEY
HAROLD J. CHASE
PETER W. FISHER
JAMES T. HURST
CHARLES NEGLEY
THOMAS E. MORTON
LORIN CASTLEMAN

LAW OFFICES
MALONEY, CHASE, FISHER & HURST
465 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE
AREA CODE 415
392-5617

May 1, 1969

The Surplus Line Association
of California
315 Montgomery Street
San Francisco, California 94104

Attention: A. L. Lathrop, Manager

Re: Refunds of Federal Excise Taxes

Gentlemen:

With your Bulletin No. 306 dated March 26, 1969, you sent to all members of your association copies of several communications on the subject "FEDERAL TAX" and stated that the Executive Committee would meet shortly and, hopefully, would be able to recommend a uniform course of action in claiming and handling refunds of Federal excise taxes paid during 1968 on premiums paid to Lloyd's Underwriters.

In the communication of the Internal Revenue Service dated January 6, 1969, that ~~was~~ enclosed with Bulletin No. 306, it is stated that claims for refunds should be filed with IRS on Form 843 "...by the taxpayer who paid the tax originally."

In the communication of Lloyd's Finance Comptroller and Chief Accountant dated March 21, 1969, and that was also enclosed with Bulletin No. 306, it is stated that "United States law requires that the claim for refund be made by the person who remitted the tax

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"to the Internal Revenue Service, whether it be the United States Broker, the assured or an agent on behalf of either."

When the documentary stamp method of payment of excise taxes was changed effective January 1, 1966 to payment on the basis of quarterly tax returns on Form 720, your members were advised in the material enclosed with your Bulletin No. 236 that the excise tax return on Form 720 was to be filed by the person who was required to pay the tax, and that the tax must be paid by the person in this country who remits the premium to the foreign insurer or reinsurer or to the non United States resident agent, solicitor or broker - in other words, the last United States resident in the chain who, generally, would be the Lloyd's correspondent broker in the United States.

It is our understanding that in accordance with the advices that accompanied Bulletin No. 236, the Form 720 excise tax returns have been filed and the excise taxes had been paid since January 1, 1966, by the surplus line broker members of your association. Therefore, on the basis of the advices that accompanied Bulletin No. 306, claims for refund of excise taxes paid in 1968 on premiums paid to Lloyd's Underwriters are to be filed on Form 843 by the same surplus line broker members of your association.

Since these excise taxes that will be refunded were passed on to the assureds in the first instance, the refunds will belong to and likewise should be passed on to the same assureds. The question has arisen whether the obligations of the surplus line broker in this respect will

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be satisfied by his passing on the tax refunds to
originating producers for payment by them to the assureds.

It is our understanding that where return premiums
develop on surplus line business it is the consistent practice
of surplus line brokers to effect the payment thereof to
assureds through payment (or credit) thereof to the originating
producers who, in turn, pass along the return premiums to the
assureds.

As a practical matter, there appears to us to be
no compelling reason why the return by surplus line brokers
to assureds of excise tax refunds cannot be effected in
precisely the same manner that payment of return premiums
to assureds are effected.

Excise tax refunds received from surplus line
brokers by originating producers for payment to assureds
are fiduciary funds while in the hands of such producers,
regardless of whether they come within the literal wording
of Section 1733 of the California Insurance Code, and we
are satisfied that no objection on the part of the California
Commissioner to the procedure, per se, of surplus line brokers
effecting the return to assureds of such refunds through pay-
ment (or credit) thereof to originating producers, may be
expected.

We are not in a position at this time to express
a definitive opinion whether payment to the originating
producer by the surplus line broker of excise tax refunds
will relieve the surplus line broker of possible civil
liability to the assured therefor if the latter does not

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in fact receive it from the producer.

The answer requires application of the law of agency to the facts which very well may differ in each case. However, the exposure of surplus line brokers to any such possible civil liability to assureds with respect to excise tax refunds paid to originating producers who failed to pass them on to the assureds is certainly no different or greater than presently exists with respect to possible civil liability to assureds with respect to return premiums paid (or credited) to originating producers who fail to pass them on to assureds.

For these reasons and as a practical matter, therefore, we feel that the obligations of the surplus line broker in this matter generally will be satisfied by his effecting the return to assureds of excise tax refunds by the payment (or credit) thereof to originating producers with directions to pay same to the assureds entitled thereto.

Sincerely yours,



JOHN R. MALONEY

JRM:dt