

THE SURPLUS LINE ASSOCIATION
OF CALIFORNIA

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BULLETIN TO ALL MEMBERS:

RE: U. S. - France Tax Protocol

This is intended to alert members to highlights of the recently enacted U. S. - France Tax Protocol.

The U. S. Internal Revenue Code imposes an excise tax generally on premiums paid by a U. S. insured to an alien insurance company for the insurance of a U. S. risk. That tax is imposed at the rate of 4% of gross premium on property and casualty insurance and indemnity bonds and 1% of gross premium on life, sickness and accident insurance, annuity contracts and reinsurance.

On July 9, 1979, the United States Senate ratified a protocol to the Income Tax Convention with France which is effective retroactive to January 1, 1979. The effect of the Protocol is to exempt from the excise tax the premium on placements of U. S. risks made with French insurers which do not have a U. S. "permanent establishment" (i.e., a U. S. office or other fixed place of business) with the following qualifications:

Direct Placement

The exemption is only available to the extent that the risks covered by such placements are retained by the French insurers and not reinsured with reinsurers in countries which do not enjoy excise tax exempt status.

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For example, where a French insurer insures a U. S. property or casualty risk for a \$1,000 premium of which \$500 is ceded to a German company (not currently entitled to exemption from the excise tax), a \$20 tax on the ceded portion would be due.

Reinsurance Placement

Reinsurance assumed by French reinsurers from U. S. cedants are exempt from the 1% excise tax if such reinsurance is not retroceded to reinsurers in countries which do not enjoy excise tax exempt status.

Since a surplus line broker could become liable for the excise tax on insurance placed by him, it has been suggested that the safest course is for the placing broker to obtain and retain in his records, documentation from the overseas broker or French insurer substantiating the fact that the placement, or the portion thereof for which exemption is claimed, will not be reinsured by a non French alien reinsurer that is not entitled to exemption under a different tax treaty.

Because the effects of the Protocol are retroactive to January 1, 1979, persons who have paid excise taxes subsequent to that date on placements made with French insurers may be entitled to a refund of taxes. Procedures for claiming refunds are expected to be finalized shortly by the I.R.S., and inquiries about refunds should be directed to the excise tax personnel associated with the nearest office of the I.R.S.

The Association emphasizes that the foregoing are only highlights of the new Protocol. Members who place risks with French insurers should seek tax advice from qualified tax accountants or attorneys with respect to individual placements.

AEM/amc

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