



August 8, 1997

BULLETIN # 806

Re: Premium Tax on Broker Fee/Policy Fees

Enclosed is a letter dated July 29, 1997, from Dennis Ward, Chief, Enforcement Division of the Department of Insurance. This letter clarifies the application of premium taxes to various fees charged to California insureds on surplus line placements as stated in our previous Bulletin # 628, dated February 9, 1994. If you have any questions or require further information, please feel free to call me.

July 29, 1997

Ms. Deanna Zanoni Director, Stamping Office
The Surplus Line Association of California
388 Market Street, 11th Fl.
San Francisco, CA 94111

Re: Surplus Line Premium Tax

Dear Ms. Zanoni:

It has been brought to my attention that the attached letter dated February 4, 1994 has been misinterpreted by some of your members resulting in an under-reporting of surplus line premium tax. Specifically, the brokers mistakenly believe, based in part on the fourth paragraph of the letter, that premium taxes are not payable on any fees that are retained by the broker. The purpose of this letter is to bring this problem to your attention; and, to restate and, hopefully, clarify the principles set forth in the February 4, 1994 letter.

This Department believes that all charges imposed or required by the nonadmitted insurer, whether labeled as premium, inspection fees, policy fees or any other name, constitute taxable premium. The fact that the insurer may authorize the surplus line broker to retain any of these fees as part of the broker's compensation does not change the fact that the fees are part of the premium and, therefore, taxable.

If the insurer requires or imposes a fee to be charged as part of the cost of obtaining the insurance protection, then the fee is to be treated as part of the taxable premium regardless of who retains the fee. Policy fees and inspection fees are common examples of fees that are generally taxable.

Fees negotiated between the broker and insured to compensate the broker for services performed on behalf of the insured are not generally considered taxable premium. The fee must be levied solely by and for the benefit of the surplus line broker and not remitted to the nonadmitted insurer. This type of fee, typically referred to as a "broker fee", must be disclosed to, and accepted by the prospective insured, prior to the placement of coverage.

The broker should accurately describe the fee and its purpose. Broker fees should not be labeled by terms which are deceptive and/or misleading to the prospective insured. Your assistance in providing this clarification to your membership would be appreciated.

Very truly yours,

Dennis C. Ward,
Chief Enforcement Division