



The Surplus Line Association of California

388 Market Street, 11th Floor • San Francisco, CA 94111

February 19, 2003

Theodore M. Pierce  
Executive Director

Deanna M. Zaroni  
Director, Stamping Office

Telephone  
(415) 434-4900  
In Ca (800) 334-0491  
Fax  
(415) 434-3716  
[www.slacal.org](http://www.slacal.org)

**BULLETIN #997**

**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, which clarifies the application of premium taxes to various fees charged to California insureds in surplus line placements. We originally circulated this letter in our bulletin #806, dated August 8, 1997, and we recirculate the letter herein for reference. The Department has not issued any further updates or clarifications to the July 29, 1997 letter.

Please remember that the Surplus Line Broker and Special Lines Surplus Line Broker Annual Statement and Tax Return for the calendar year is due every March 1<sup>st</sup>. If you have any questions or require further information, please feel free to contact me, or Deanna Zaroni.

Sincerely,

A handwritten signature in cursive script that reads "Ted Pierce".

Theodore M. Pierce  
Executive Director

**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

**February 9, 1994**

**BULLETIN #628**

**RE: PREMIUM TAX ON BROKER FEES/POLICY FEES**

Enclosed is a letter dated February 4, 1994 from Mr. Dennis Ward Chief of the Enforcement Division of the Department of Insurance. He has provided direction relative to the application of premium taxes to broker fees and policy fees charged to California insureds on surplus line placements.

We urge you to familiarize yourself with the information contained therein.

James S. Pugh  
Assistant Manager  
JSP/ljl  
Enclosure

STATE OF CALIFORNIA  
JOHN GARAMENDI, Insurance Commissioner  
DEPARTMENT OF INSURANCE  
SAN FRANCISCO, CA 94105

February 4, 1994  
Mr. James S. Pugh  
Assistant Manager  
The Surplus Line Association of California  
388 Market Street  
San Francisco, CA 94111

**Re: Premium Tax on Broker Fees & Policy Fees Dear Mr. Pugh:**

This letter is in response to your January 27, 1994 letter in which you request direction from the Department on the application of premium taxes to broker fees and policy fees charged to insureds on surplus line placements.

This Department believes that all charges levied or authorized by the nonadmitted insurer, whether labeled as premium, inspection fees, policy fees or otherwise, constitute taxable premium.

Broker fees and other charges levied solely by and for the benefit of the surplus line broker and not remitted to the nonadmitted insurer, would not be generally considered taxable premium. However, the surplus line broker must disclose these fees; and, the prospective insured must agree to these fees prior to the placement of the coverage. Furthermore, 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.

In conclusion, policy fees or other charges levied by the nonadmitted insurer are taxable. Broker fees or other fees levied solely by and for the benefit of the surplus line broker are not taxable.

I trust that this letter provides you with the direction you have requested. However, if you need further information or clarification please let me know.

Very truly yours,

DENNIS C. WARD

Chief, Enforcement Division

DCW:gam

cc: Patricia Staggs, Carol Fistler, Levi LaCuesta