

ALLOCATION OF SURPLUS LINES AND INDEPENDENTLY PROCURED INSURANCE PREMIUM TAX ON MULTI-STATE RISKS MODEL REGULATION

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Section 1. Purpose

The purpose of this regulation is to:

- A. Implement the provisions of Section [insert citation to state law equivalent to Section 5 of the Nonadmitted Insurance Model Act] by requiring surplus lines licensees to allocate premiums where a placement of surplus lines insurance covers properties, risks or exposures located or to be performed in various states (multi-state risks);
- B. Facilitate payment of surplus lines tax or independently procured insurance tax in this state pursuant to [cite state law equivalent to Section 6 of the Nonadmitted Insurance Model Act]; and
- C. Provide a mechanism by which a surplus lines licensee or insured shall allocate premiums and pay premium taxes to each state where placement of surplus lines insurance covers properties, risks or exposures located or to be performed in each state.

Section 2. Allocation of Premium Tax on Multi-State Risks

- A. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be presumed to be written on properties, risks or exposures located or to be performed in this state, except
 - (1) For a reciprocal state, premiums that are allocated or apportioned as taxable premiums of the reciprocal state in accordance with the provisions of this regulation, but the tax payable to this state shall not be less than the tax due pursuant to this regulation. However, if the amount of tax due under this provision is less than \$50 in any jurisdiction, it shall be payable in the jurisdiction in which the affidavit is required to be filed; or
 - (2) For a nonreciprocal state, premiums that are allocated or apportioned as taxable premiums of the nonreciprocal state and the taxes have been paid to the nonreciprocal state.
- B. On an insurance policy covering properties, risks or exposures located or to be performed in various states, the tax to be paid to the commissioner of each state shall be computed on that portion of the policy premium that is attributable to properties, risks or exposures located or to be performed in each state.
- C. The surplus lines licensee or the insured who has independently procured insurance shall determine the taxable portion of the premium by using one of the following methods:
 - (1) Allocate premium on the same basis or bases used to establish the policy premium; or
 - (2) Allocate premium as prescribed in the allocation schedule in Appendix A of this regulation that pertains to the classification describing the coverage, subject to the following:
 - (a) If the allocation schedule does not identify a classification appropriate to the properties, risks or exposures being insured, the surplus lines licensee or the insured who has independently procured insurance shall use an alternative equitable method of allocation; and

- (b) If a policy covers more than one classification:
 - (i) For any portion of the coverage identified by a classification on the allocation schedule, the tax shall be computed by using the allocation schedule for the corresponding portion of the premium;
 - (ii) For any portion of the coverage not identified by a classification on the allocation schedule, the tax shall be computed in accordance with Subparagraph (a) of this paragraph; and
 - (iii) For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation that pertains to the classification describing the predominant coverage.

- D. If the information provided by the surplus lines licensee or the insured who has independently procured insurance is insufficient to substantiate its method of allocation, or if the commissioner determines that its method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state, as follows:
 - (1) If the allocation schedule identifies a classification appropriate to the coverage, the commissioner shall use the method prescribed in Subsection C.
 - (2) If the Allocation Schedule does not identify a classification appropriate to the coverage, the commissioner, in determining the equitable and appropriate amount of tax due to the state, shall give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information, to the extent sufficient and relevant, such as the percentage of the insured's physical assets in this state, the percentage of the insured's employee payroll in this state, the percentage of the insured's sales in this state and the amount of premium tax paid to another jurisdiction for the policy.

Drafting Note: In some states, determination of, and payment of, tax is the responsibility of a state official other than the commissioner. Subsection D should be modified as necessary to reflect state law.

Section 3. Reporting and Remittance of Tax

- A. Each licensee or insured who has independently procured insurance shall file a tax allocation report, as specified in Appendix B of this regulation. The filing of a tax allocation report and the remittance of tax may be made by a person authorized by the insured to act as its agent.
- B. The commissioner shall at least annually furnish to the commissioner of a reciprocal state a copy of all filings reporting an allocation of taxes required by this section.
- C. The preparation and submission of tax allocation reports and the payment of independently procured insurance taxes by a surplus lines licensee of another state to the commissioner of this state either directly or indirectly for lawful transactions taking place outside this state shall not be considered the placement of insurance in this state by the surplus lines licensee.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1995 Proc. 3rd Quarter 5, 18, 855, 903, 930 (adopted).

APPENDIX A

**SURPLUS LINES PREMIUM TAX
ALLOCATION SCHEDULE**

**Criteria for Tax
Allocation of Multi-State Risks**

CODE CLASSIFICATION	ALLOCATE TO STATE BY
PROPERTY INSURANCE:	
01 Real Property (including buildings and other permanent additions)	Insured value of structures and other property in state
02 Personal Property (including inland marine)	Insured value of property permanently or principally situated in state
03 Business Interruption, Time Element, or similar time value coverages	Insured time valued elements in state
04 Farmowners, Homeowners, and Businessowners (BOP)	Insured value of structures and other property in state
05 Aircraft	Insured value of aircraft principally hangared or principally used in state
06 Motor Vehicle	Insured value of motor vehicles principally garaged or principally used in state
07 Kidnap & Ransom	Number of insured employees principally employed in state
08 Ocean Marine	None to state
FIDELITY AND SURETY:	
11 Fidelity, Forgery, and other Indemnity Bonds	Number of insured employees in state
12 Bankers' Blanket Bonds	Number of insured employees in state
13 Performance Bonds	Total bond value of contracts in state
14 Other surety Bonds	Total bond value of contracts in state
CREDIT INSURANCE:	
21 Credit Insurance	Value of insured debt in state
RESIDUAL VALUE INSURANCE:	
31 Residual Value Insurance	Allocate to value of underlying property

LIABILITY INSURANCE:

41	Manufacturers and Contractors	Payroll in state
42	Premises Operations	Square footage of premises in state
43	Owners and Contractors Protective	Cost of contract in state
44	Products	Receipts in state
45	Completed Operations	Receipts in state
46	Municipalities, Public Authorities and other Political Subdivisions	Number of municipalities, etc. in state
47	Child Care	Number of children in state
48	Contractual	If "stand alone" policy, value of sales in state
49	Recreational	Amount of gate receipts in state
50	Environmental Impairment	Number of units of exposure in state
51	Asbestos Abatement	Payroll in state
52	Employee/Member Benefit Program	Number of employees/members in state
53	Special Events	Receipts from state
54	Professional Liability	Number of insureds in state
55	Errors and Omissions	Revenues generated in state
56-A	For-Profit Organization	Revenues generated in state
56-B	Not-for-Profit Organization	Number of directors and officers based in state
57	Hospital, Nursing Home, and Adult Home	Number of beds in facility plus one additional bed for each 100 outpatient visits at locations in state
58	Liquor Liability	Receipts from sales of alcoholic beverages in state
59	Railroad Protective	Miles of track in state
60	Aircraft	Number of aircraft principally hangared or principally used in state
61	Motor Vehicle	Number of motor vehicles principally garaged or principally used in state
62	Umbrella	Classification of predominant coverage; except if underlying coverages are divisible, then use underlying classifications
63	Excess Liability	If directly over primary, use underlying classifications. If over umbrella, use method in Code 62.

APPENDIX B

TAX ALLOCATION REPORT

AFFIDAVIT # _____

1. NAME AND LICENSE NO. OF SURPLUS LINES PRODUCER

2. NAMES, ADDRESSES, TELEPHONE NOS., AND NAIC NOS. OF INSURERS

3. NAME OF INSURED AND POLICY NUMBER _____

If purchasing group or an authorized group, list (a) name of group; (b) names of individual members for whom the allocation is being made; and (c) the policy numbers (group and individual) and certificate numbers, as applicable.

4. TOTAL GROSS POLICY PREMIUM
(PG. 2 ITEM 8, COL. 5 TOTAL) \$ _____

5. PREMIUM ALLOCATED TO (insert state) _____ \$ _____
(PG. 2 ITEM 8, COL. 6 TOTAL)

6. AMOUNT OF PREMIUM TAX DUE TO (state) _____ \$ _____
(PG. 2 ITEM 8, COL. 7 TOTAL)

NOTE: This payment shall be included with your quarterly (or annual) premium tax payment.

7. LIST ALL STATES IN WHICH EXPOSURE EXISTS AND THE CORRESPONDING PREMIUMS AND TAXES ALLOCATED TO EACH STATE (USE A SEPARATE PAGE IF NEEDED).

Allocation of Premium Tax

8. Calculation of Premium Tax Allocation:

1	2	3	4	5	6	7
Classification Codes and Methods of Allocation as indicated in the Allocation Schedule	Total Amount of Exposure	Exposure in (insert state)	% Ratio of Column 3 to Column 2	Total Gross Policy Premium	Premium Allocated to (insert state). Multiply Column 4 by Column 5	Tax Due to (insert state). Multiply Column 6 by
TOTALS	XXXXX	XXXXX	XXXXX	\$	\$	\$

Notes:

Column 1:

- (a) If policy covers more than one classification, enter each classification code separately.
- (b) For any portion of the premium that is not divisible, list all coverages and specify the predominant coverage.

Columns 2 and 3:

- (c) Indicate the units, insured values, numbers, etc. upon which the allocation is made. If classification code and method of allocation for all or a portion of the policy is not listed in the Allocation Schedule, attach explanatory memorandum describing the property or risk and supporting the alternative equitable method of allocation used for that portion.

Column 7:

- (d) Insert tax rate.

THE FOLLOWING CERTIFICATION MUST BE COMPLETED

The undersigned certifies that the information reported in Items 1 through 8 of this form, including all attached supporting documentation, is true to the best of my knowledge, information and belief under penalties of perjury.

Date

Signature of Licensee or Sublicensee