

SURPLUS LINES (C) TASK FORCE

Surplus Lines (C) Task Force Sept. 23, 2009, Minutes

License Exemption Comment Letters – (Attachment One)

Multi State Surplus Lines Premium Tax Working Group Sept. 16, 2009, Conference Call
– (Attachment Two)

Multi State Surplus Lines Premium Tax Working Group Aug. 25, 2009, Conference Call – (Attachment Three)

Surplus Lines (C) Task Force 2010 Proposed Charges – (Attachment Four)

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State/Organization: Georgia Department of Insurance

Name: M. Linda Brooks

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

The Surplus Lines (C) Task Force, in an effort to research an issue related to producer licensing of nonresident surplus lines writers, requests that you provide responses to the following two questions. As indicated below, the Task Force is soliciting comments on both questions from regulators, while interested parties need only respond to question #2.

Within your response, feel free to comment on other considerations not covered by the proposed questions. All comments must be received by the end of the business day September 16, 2009, and should be sent electronically to the attention of Bob Schump (NAIC Staff) at rschump@naic.org.

Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Please refer to O.C.G.A. § 33-5-31(b) ... proportion of risk in Georgia must be properly allocated ...

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

State/Organization: OHIO

Name: Felisa Brown

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Currently in Ohio a producer that has placed surplus lines business here, even in multi-state risk, must hold a resident/non-resident license. We have an on-line reporting database which allows the licensee to report all Ohio business under their license number. When the producer receives their license they are issued a user ID & password which gives them the access to the database. Without the license and therefore the user ID & password, the placement would have to be treated as a Direct Placement which would mean there would be no reporting but the State would receive the tax on that placement.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

We do feel that there could be some statutory changes and system changes made that would allow us to change how the user ID & passwords are issued to a producer that doesn't have a surplus lines license



National Association of Professional Surplus Lines Offices, Ltd.

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Richard M. Bouhan
Executive Director

September 14, 2009

Mr. Robert F. Schump
National Association of Insurance Commissioners
Surplus Lines & Information Services Program Manager
Insurance Analysis & Information Services Department
2301 McGee Street, Suite 800
Kansas City, MO 64108

Dear Mr. Schump:

I am writing in response to the NAIC's survey regarding the Producer Licensing Multi-State Exemption contained in the Producer Licensing Model Act and whether it applies to surplus lines producers. As a preliminary matter, I have enclosed a copy of a survey recently completed which indicates approximately half the states responded that they would like the surplus lines broker to have a license from every state where any portion of the risk resides. In our view the responses to the survey were contrary to the position taken by the Producer Licensing Model Act, and contrary to the Non-Admitted and Reinsurance Reform Act, both of which made the policy decision that a single license should be required to write a multi-state risks.

The question actually circulated to regulators is written in such a way that may not elicit information necessary to resolve the various issues that are raised by the policy of requiring a "producer's" license in every state where any portion of the risk resides. Many regulators might like to require more producers' licenses since the question seems to indicate that it would make it easier to collect taxes. We believe the more important question the survey should have addressed is whether the policy decision was already made by the policymakers at the NAIC, the state legislators and the U.S. House of Representatives. If not, is it the proper policy to require a license in every state where any portion of the exposure resides for the placement of a single policy? If multiple licenses for a single placement is the policy that the regulators would like to adopt, is it and consistent with the constitutional principles?

The question presented was:

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

The question is worded as though it assumes the license would make it easier to collect the taxes. The question is not asking for anything objectively verifiable such as the effectiveness of the states that collect the tax without the requirement of multiple

September 14, 2009
Page Two

licenses. The question also fails to address the issue of whether the matter was resolved by the producer licensing model act or the NAIC's endorsement of the Non-admitted and Reinsurance Reform Act. The question also does not address the issue of whether the multiple license requirement is consistent with constitutional principles of minimum contacts addressed in *State Board of Insurance v. Todd Shipyards* 370 U.S. 451(1962) (a portion of the risk in state is not a sufficient nexus for state to tax an insurance transaction). Many regulators may theorize that an additional license would be helpful to a state to collect the tax since the question seems to insinuate as much, but they would have no way of knowing if their opinion was accurate or not. Texas for example, does not require a surplus lines producer's license and they have not complained of brokers ignoring their surplus lines tax requirements.

The question could have been structured in a manner to help resolve the various issues to be addressed. The issues include the following:

1. Whether the PLMA policy of requiring one license in the insured's home state to write a multi-state risk should be applied to surplus lines insurance? If not, why not? The NAIC also endorsed the surplus lines portions of the Non-admitted and Reinsurance Reform act which requires a single policy to write a multi-state risk, so again the NAIC policymakers may have already made the decision.
2. Whether it is the proper policy to require a producer's license for the privilege of paying an out of state portion of the tax, when on its face a producer's license was intended to authorize the sale, solicitation or negotiation of insurance; not a license to pay a tax.
3. Whether the US constitution would allow a state to regulate and tax a transaction where there is no nexus to the state except for the fact that a portion of the risk is in the state. The holdings in *Todd Shipyards* and *Dow Chemical* have answered these questions in the negative.
4. Whether the states would be just as effective or more effective by adopting a compact or establishing a process, like Arizona and Texas, for the broker to remit the tax without imposing the burden of obtaining between 75 and 135 licenses. (A broker producing a 50-state risk for example may presently need 50 P&C licenses, 50 surplus lines licenses and approximately 35 entity licenses for the production of a single policy.)

The Producer Licensing Model Act was a major initiative of the NAIC and one of the more successful. It directly addressed the issue of whether, as a stated policy, the states would require a producer's license from every state where any portion of the

September 14, 2009
Page Three

exposure resides. Section 4B(6) contains a commercial multi-line exemption to the licensing requirements of the PLMA for:

A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in that state where the insured maintains its principle place of business.

It is not clear why the policy adopted in the PLMA does not also apply to surplus lines licensees. Approximately 86 percent of commercial property/casualty business is written in the admitted markets so the policy applicable to 86 percent of the markets should be applied to all markets. In fact multi-state surplus lines placements were transacted through a single license in the insured's home state from the late 1800's until beginning around 2003 following the adoption of GLBA. It could not possibly have been the legislative intent to require multiple surplus lines licenses to write a single surplus lines policy because virtually all of the surplus lines laws were written prior to the advent of multi-state licensing brought on by GLBA. The imposition of multi-state licensing requirements for a single policy was brought on without any state legislative impetus. To the contrary, the state legislators addressed the issue in the PLMA where they expressed the policy for a single license to write a multi-state commercial lines policy. The U.S. House has also passed legislation supporting the position that a single surplus lines license in the insured's home state is all that is needed for a multi-state placement of surplus lines insurance. The surplus lines portion of this legislation has been supported by the NAIC. The policymakers appear to have already addressed the issue of how many surplus lines licenses are required for a single policy placement.

The fact that the surplus lines broker is called upon to remit the surplus lines tax should not change this policy. There are many more important functions performed by agents every day, such as advising clients, binding risks, collecting premium etc. The surplus lines tax is typically 3 percent to 5 percent so it is relatively small in the scheme of broker duties. The risk involved in mishandling surplus lines tax is miniscule and requiring a license does not alleviate the risk that a tax could be mishandled.

Below is an example of a surplus lines broker licensing requirement (from Missouri).

- **384.043. Licensing requirements for surplus lines brokers. . .**
- **1. No insurance producer shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the director.**

September 14, 2009
Page Four

The language is typical in requiring a license to “procure any contract of surplus lines insurance.” The term “procure” is synonymous with “transact” and a surplus lines placement is transacted in a single location. The interaction of the broker with the insured in selling, soliciting and negotiating insurance is considered to be procuring a surplus lines insurance contract. Again, the procurement occurs in a single location. If a policy was procured in New York, but 2 percent of the risk exposure was in Montana, we would not say the policy was “procured” in Montana. It was procured in New York so a license from New York is all that would be required. Language similar to this was construed to authorize a multi-state placement through a single surplus lines license from the home state of the insured for more than a century.

Another issue ignored by the survey question is that a “producer’s” license was obviously intended to be for the privilege of selling, soliciting or negotiating insurance. If the producer is not selling, soliciting or negotiating insurance, then they should not need a “producer’s” license. If a tax is legally due the states can collect the tax without a “producer’s” license. The producer’s license was turned on its head by those states requiring a license to sell insurance - but not for the purpose of selling insurance in the state – but for the apparent purpose of influencing the tax collection process. Apparently, based upon the wording of the question, the “producer’s” license is viewed as something that would influence the tax collection process. In the case of small brokers however, the requirement to obtain a “producers” license for the privilege of remitting a tax is more of an impediment than an enabler.

Another issue ignored by the question is that for the vast majority of small brokers there is a serious question as to whether the state where incidental portions of a risk resides may require them to obtain a license based upon constitutional issues addressed in *Todd Shipyards*. If, for example, an Atlanta broker sold a policy to a distributor of coffee beans and 2 percent of the beans were distributed in Montana, can Montana require the broker to obtain a license from Montana for the privilege of remitting a tax? If the Atlanta broker never sold, solicited or negotiated insurance or stepped foot in Montana, it is not likely that a court, applying constitutional principles, would conclude that Montana could regulate or tax a transaction occurring in Atlanta.

The questions of whether one license is needed or 135 licenses are needed impact the largest surplus lines brokers different from the small surplus lines brokers. Large brokers already have licenses and operations in all states. Small brokers typically do business within a single state. The policy of requiring so many licenses for a single policy placement disproportionately impacts the small brokers. For the vast majority of small brokerage companies, the licensing burden may act as an impediment to the payment of the tax. The *Todd Shipyards* case requires a nexus between the state and the insurance transaction before a tax can be collected. It makes it clear that the fact that a portion of the risk resides in a state is not a sufficient nexus to allow the state to collect a premium tax when the transaction occurred outside the state. If the states

September 14, 2009
Page Five

require a license from every state where any portion of the risk resides, the small broker has a disincentive to try and pay the tax and a US Supreme court case (Todd Shipyards) for authority that no tax is due.

The second question in the survey is as follows:

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

There are a number of approaches to dealing with multi state taxation without requiring numerous licenses for every risk. The state could adopt an inter-state compact, consider incidental portions of the risk to be independently procured insurance or the state could simply require the reporting and payment without the licensing requirements like Arizona. Brokers will generally remit the tax if there is a way to do so to avoid conflict with regulators. There would appear to be no reason for multi-state licensing under any option because the licensing does not mean that a tax is consistent with constitutional principles. A broker may be more inclined to remit the tax to avoid problems with licensing, but the constitutional limitations on the collection of the tax would remain.

At one point the NAIC, NAPSLO and others believed the solution to this problem was to treat the out of state portions of a multi-state risk as independently procured insurance (IP). This history is detailed in the paper recently distributed by Ed Simpson (attached). Since the Insurer is not licensed and the broker would not be licensed, the IP statutes would appear to be applicable. The other advantage of using the IP statutes is that it would eliminate the questions of whether incidental portions of the risk require a separate in-state bank account, a separate in-state set of records, separate in-state affidavits, and other measures that were intended for the home state. As the report from Ed Simpson explains, this approach fell out of favor because the case law indicated that there had to be a nexus between the taxing state and the transaction being taxed. Nevertheless this approach has been used successfully and continues to be used to this day. Texas has taken this approach and I have enclosed a document explaining the position of Texas. This approach would be as successful as any other approach available (except for the compact) because the constitutional issues that make it difficult to collect the tax would also make it difficult to require a license. If the state has jurisdiction over the broker, they could collect the tax whether or not there is a license. If the state has no jurisdiction over the broker they would be unable to require a license or a tax.

A second approach is the approach taken by Arizona. The Arizona form is attached. The Arizona form simply requires the broker to file a report remitting the out of state portion of the risk. No license is required. Is there a risk the broker will fail to remit the Arizona portion of tax? The answer is that there is no greater risk that a broker will fail

September 14, 2009
Page Six

to remit the tax, then the broker will fail to become licensed in the first place. If a state has no jurisdiction to tax a transaction occurring in another state because the broker never sold, solicited, or negotiated insurance or set foot in the state, it is also lacking jurisdiction to require a license. The large brokers are doing everything they can to pay the tax because they obviously are transacting business in all states. The small brokers may in fact be more able to remit the tax if the state does not require the lengthy, complex and expensive licensing process just for the privilege of paying the tax. Logically, if it is easier to comply, more people will do so. As is, the process makes it difficult to pay the tax because the licensing process is very burdensome and there is a defense to licensing based upon a United States Supreme Court case.

The NAIC's Multi-State Tax Working Group (MSTWG), is working on a multi-state reporting form that could be used to report the allocation of tax to the various states. There is no reason the form would need to require multiple licenses to report a single policy covering a multi-state risk. If the states were to adopt the uniform reports and share the uniform reports, then the state would have the data necessary to collect the tax.

Note that SLIMPACT also requires a single license in the insured's home state to write a multi-state risk, but would require the broker to remit the tax on incidental portions of the exposure to the state where the exposures reside. SLIMPACT would have resolved the issue and we believe SLIMPACT would have required the broker to remit taxes to the states where the exposure resides, which is not required by state law today. SLIMPACT was the most workable and viable approach.

Many of the large surplus lines states do not require a license from every state where any portion of the risk resides. New York has a multi-state exemption similar to the PLMA. Texas is one of the larger surplus lines states and does not require a non-resident license to remit the tax. We believe these states have collected the Surplus Lines tax due them.

Although the initial question does not drill down into the many complex issues, NAPSLO believes it is valuable for facilitating a discussion that needs to occur. We believe the policy makers at the NAIC, the state legislatures and the U.S. House have already made the decision that a single license is all that is required to write a multi-state risk. We do not believe that the burdensome licensing process is the proper policy to encourage tax reporting, particularly when a small broker could rely upon a U.S. Supreme Court case for authority that no license is required. Our understanding is that brokers would like to pay the tax to avoid conflicts with regulators, but the policy of imposing burdensome licensing requirements on the brokers is actually an impediment to the payment of the tax. NAPSLO would urge the NAIC to consider the legal environment and construct a multi-state reporting form through a compact or otherwise

September 14, 2009
Page Seven

that would allow the broker to remit the tax without the enormous burden of obtaining and maintaining approximately 135 producer licenses.

Yours truly,

A handwritten signature in cursive script that reads "Steven P. Stephan".

Steven P. Stephan, J.D., CPCU, ARe
Director of Government Relations

SPS/clr
Enclosures

State/Organization: Maryland

Name: Chineta W. Alford, Director of Premium Taxes

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Section 3-310 of the Insurance Article of the Annotated Code of Maryland, (Insurance Article) requires that a person obtain a certificate of qualification to act as a surplus lines broker in the State and Section 3-307 of the Insurance Article requires that the broker complete and submit to the Maryland Insurance Administration an affidavit at the time the insurance is placed. Section 3-324 of the Insurance Article requires that if a policy covers risk only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risks located in the State. It may impact our ability to enforce the law, if the broker is not licensed, or to even determine if insurance placed covers risks in the state.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

No consideration has been given to alternative methods and any suggested alternative methods would require legislative approval.

State/Organization: Louisiana Department of Insurance

Name: Tommy Coco, Director, Premium Tax

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

If foreign state surplus lines producers are exempt from licensing, Louisiana will no longer have a finite number of producers from which to collect the quarterly surplus lines tax forms. The confidence that nearly all taxes are being collected will be lessened considerably. Additionally, Louisiana uses the licensing procedures to ensure compliance with the laws. Louisiana would no longer be able to withhold license renewals if the producers did not need nonresident licenses to begin with.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

The two methods would appear to be to either have the home state collect and remit the taxes on a multiple-state exposure or have the taxes directly remitted by the surplus line insurer.

State/Organization: Indiana Department of Insurance

Name: Cynthia D. Donovan

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Yes, for the following reasons:

- a) Unlicensed surplus lines producers would not be in Department's database, which would generate an exception.
- b) An exception would require verification that the unlicensed surplus lines producer is properly licensed in the 'home' state.
- c) Unless there is a uniform form for reporting the multi-state exposures, it could be difficult to determine which state is the 'home' state.
- d) An exemption for unlicensed surplus lines producers would require modifications to database to record and collect surplus lines premium tax.
- e) If unlicensed surplus lines producer is using a surplus lines carrier that Indiana has not authorized, additional modifications to database would be required for data collected in conjunction with the recording and collection of premium tax.
- f) Filings from unlicensed surplus lines producers for multi-state placements might generate additional revenue, but even with modifications to the database it would greatly increase the time to process the filings because of the time involved in verification of the producers 'home' state licensure.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

State/Organization: Delaware Department of Insurance

Name: Ann Fletcher,
Tax and Fees Coordinator
RPG, RRG & SL Specialist
302-674-7383
Ann.fletcher@state.de.us

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Definitely. Monitoring the activities of SL licensees is the only way we have to ascertain business written and taxes due. Delaware does not have a stamping office so policies are not submitted for review, and the insurers are not required to make reports with policy information to the Department. If the non-resident SL broker is not licensed, the Department has no authority over the broker and no way to enforce Delaware's laws.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

The only way I can think of would be to put the burden of monitoring licensee business written and making sure the premium tax was properly distributed to other jurisdictions on the home state of the licensee. As a regulator, I would not be thrilled to have that task.

COMMENT: I have reviewed the proposed uniform reporting form and think it is a good beginning, but with the laws currently on each state's books, I can't see any way each state could enforce it's tax laws without the producers being licensed in that state. For example, Delaware has no jurisdiction over a Kansas broker who writes business on a Delaware risk but does not hold a Delaware non-resident license.

State/Organization: **Kentucky Department of Insurance**

Name: **John Love,**
Surplus Lines Program Manager

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Kentucky applies its statutes and administrative regulations without distinction to the residency of the licensee.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

Kentucky does not allow 'courtesy filings', but does occasionally authorize such submissions in situations which exhibit extenuating circumstances.

State/Organization: Virginia

Name: Keith Kelley

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

The licensing requirement provides the ability to identify brokers operating in the state and if that ability is removed then it could impact the collection of premium tax.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

States could collect premium taxes from the insurance carriers; however, the issue of policy fees assessed by the brokers would need to be addressed.

State/Organization: South Dakota Division of Insurance

Name: Randy Moses

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Since the tax must be reported and collected by the surplus lines broker under current law, the inability to require licensure of those surplus lines brokers would remove any effective ability to enforce reporting requirements or to efficiently and accurately collect the tax due on such placements.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

The only alternative method that we feel would be workable would be to place the requirement for reporting and payment of taxes on the surplus lines insurers. This would in fact be more efficient and more accurate than the current system. If this were to be in place, the need for licensing such multi-state brokers would diminish.

State/Organization: Arkansas

Name: Pam Looney

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Arkansas has had the exemption from licensure for multiple state risks but it only applies to the licensure of regular producers--Arkansas Code Ann. 23-64-504 (b) (6). There is no exemption that extends to Surplus Lines Producers to my knowledge. Arkansas does allow for the self-procurement of surplus lines coverage and allows for the company that self-procured or the company's designee to pay the surplus lines taxes. Arkansas Insurance Code Ann. 23-65-103(a) (1).

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

State/Organization: NH Insurance Department

Name: Barbara Richardson

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

In a situation where a producer is not licensed in our state and is responsible for paying taxes, but does not, we have no legal jurisdiction to force that producer to pay without the license component. That would mean that if a non-licensed producer chose not to pay the proper amount of premium tax owed, we would have no legal recourse to force the payment. This would definitely impact potential premium tax collections.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

If the Surplus lines insurance provider (company) was forced to pay the taxes, this would take the Producer out of the mix.

Date: 9/4/09

State/Organization: HAWAII – Insurance Division

Name: Roderick Y. Uyehara, Insurance Examiner

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

The Surplus Lines (C) Task Force, in an effort to research an issue related to producer licensing of nonresident surplus lines writers, requests that you provide responses to the following two questions. As indicated below, the Task Force is soliciting comments on both questions from regulators, while interested parties need only respond to question #2.

Within your response, feel free to comment on other considerations not covered by the proposed questions. All comments must be received by the end of the business day September 16, 2009, and should be sent electronically to the attention of Bob Schump (NAIC Staff) at rschump@naic.org.

Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Response: If a nonresident unlicensed producer transacted a multi-state policy what assurances would we get that the producer pays us the taxes that are due. Currently, surplus lines business must be placed thru a licensed surplus lines broker (resident & nonresident) and the broker must file a report of the surplus lines business they transacted with us. Hawaii Revised Statutes ("HRS") §431:8-315 (b) states that for policies covering risks or exposures only partially in this State the tax so payable (by the surplus lines broker) shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this State.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

Response: We do have the Independently Procured method that individual businesses use to pay the surplus lines tax where no broker is supposedly involved. HRS 431:8-205. There is a 60 day period in which the tax must be paid. Not sure if this will work or whether statutory changes would be required to meet the requirements of the task force.

Is this related to the Nonadmitted and Reinsurance Reform Act?

State/Organization: Wisconsin Commissioner of Insurance

Name: Yvonne Sherry

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

The licensed surplus lines agent becomes the controlling factor in the collection of surplus lines tax in Wisconsin. Pursuant to s. 618.43, Wis. Stats., "If a policy covers risks that are only partially located in this state, the premium shall be reasonably allocated among the states on the basis of risk locations in computing the tax." The insurance agent or broker and the policyholder are jointly and severally liable for the payment of the tax required. If the policy was procured by a nonresident agent not carrying a surplus lines license, under our regulations, he/she would have to request a "courtesy filing" by a resident licensed surplus lines agent to file the surplus lines tax filing with this office. Wisconsin regulation does not address "courtesy filings", therefore, they are acceptable. However, the surplus lines agent submitting the information may be held liable for any issues that may arise from that filing.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

As explained in #1, "courtesy filings" would be acceptable.

State/Organization: Wyoming Insurance Department

Name: Donna F. Stewart, Insurance Standards Consultant

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Response:

The surplus lines tax database records are created and maintained based on information from the surplus lines broker licensing records. The licensed brokers are responsible for ensuring compliance with laws, reporting transactions and paying taxes.

The link between licensing and tax records provides a necessary management tool for creating accounts, recording transactions, communicating with brokers and monitoring compliance.

Wyoming, has not adopted independent procurement laws. Surplus lines coverage must be procured through a licensed surplus lines broker. There is no authority or system in place which would facilitate the collection of surplus lines taxes from brokers not licensed in the state.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.



September 14, 2009

Robert Schump
Sr. P/C Financial Analyst
NAIC Financial Regulatory Services Division
2301 McGee Street, Suite 800
Kansas City, MO 64108-2604

Re: Surplus Lines Task Force Questionnaire

Dear Mr. Schump,

The following is in response to the questionnaire you circulated on August 26, 2009. This response is to question 2 of the questionnaire only.

Question 2: Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

The Surplus Lines Insurance Multistate Compact (SLIMPACT) was crafted in a manner to require a surplus lines broker to comply with the surplus line laws and regulations of the “Home State” of the insured when placing a multistate risk but also requires the surplus lines broker to pay taxes to each state where the insured has risk exposures. While the surplus line broker is required to be licensed only in the home state of the insured to place a particular multistate risk, SLIMPACT is both legislation and a treaty or contract among the compacting states. Therefore, SLIMPACT makes it a “home state” legal requirement in each compacting state for licensed surplus lines brokers to pay surplus lines tax to each state where risk exposures of the insured are located. The effect of this SLIMPACT provision, is that the surplus lines broker must pay tax to all compacting states where risk exposures are located, whether licensed in those other states or not.

While the foregoing directly responds to Question 2, the following are some additional comments which more fully explore the issues raised.

The “home state” approach to regulation of multistate risks set forth in SLIMPACT is consistent with the licensing requirements of the NAIC’s Producer Licensing Model Act (PLMA) and the proposed Non Admitted and Reinsurance Reform Act. The state which is most closely connected to the insured should be the state which regulates the insurance transaction. That is certainly the philosophy evidenced in the PLMA for admitted transactions. In the surplus lines market, historically, the resident state of the surplus lines broker regulated the surplus line transaction in most cases since only a resident by law could acquire the license. However, with the advent of nonresident surplus line licenses becoming widely available, it

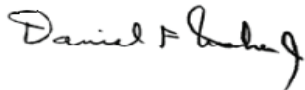
makes great sense to have a consistent approach for admitted and surplus line transactions, which is to allow the insured's home state to regulate the transaction.

The current system for paying taxes on multistate surplus lines risks, is frankly an inconsistent morass. In theory a surplus lines broker places a multistate risk under one state's law. If taxes are owed to any other state where the insured has incidental risk exposures, a so called direct or independent procurement tax may be owed, but the duty to pay that tax is on the insured not the surplus lines broker. For purposes of a stark example, if I am a surplus lines broker in New York, placing only New York state headquartered risks and holding only a New York license, no other state currently imposes a surplus lines tax on that surplus lines licensee.

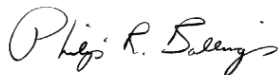
Unfortunately if you are a surplus lines broker with offices and licenses in many states placing many multistate risks, choosing which state regulates each transaction becomes more complex. This has compelled many large brokers to pay taxes to each state and avoid potential regulatory issues.

SLIMPACT was designed to achieve simplicity, clarity, and efficiency for the brokers while assuring each state its ability to collect taxes on the risk located in that state. All of this can be achieved without requiring a surplus lines license in each state for every multistate risk.

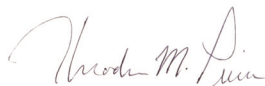
Thank you for considering our collective comments.



Excess Line Association of New York
Daniel F. Maher
Executive Director



Surplus Line Stamping Office of Texas
Philip R. Ballinger
Executive Director



Surplus Line Association of California
Theodore M. Pierce
Executive Director

State/Organization: New Jersey

Name: Steven Zalewitz

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

The Surplus Lines (C) Task Force, in an effort to research an issue related to producer licensing of nonresident surplus lines writers, requests that you provide responses to the following two questions. As indicated below, the Task Force is soliciting comments on both questions from regulators, while interested parties need only respond to question #2.

Within your response, feel free to comment on other considerations not covered by the proposed questions. All comments must be received by the end of the business day September 16, 2009, and should be sent electronically to the attention of Bob Schump (NAIC Staff) at rschump@naic.org.

Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

In New Jersey, if an out of state placement is made, and there is exposure or premiums allocated to New Jersey, we require a Direct Placement Tax Return, completed by the Insured, to pay taxes on those premiums. We do not require that the surplus lines producer, who placed the risk in another state, be licensed in New Jersey with surplus lines authority.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

State/Organization: Colorado Division of Insurance

Name: Raymond Akers

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

The Surplus Lines (C) Task Force, in an effort to research an issue related to producer licensing of nonresident surplus lines writers, requests that you provide responses to the following two questions. As indicated below, the Task Force is soliciting comments on both questions from regulators, while interested parties need only respond to question #2.

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Unlicensed non-resident brokers that can legally export insurance for risks located in states where they are not licensed into the surplus lines market have no statutory obligation to report that business or pay premium taxes to the affected state. The affected state also has no statutory means to require the unlicensed broker to report the policy and pay the premium tax.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

Require the surplus lines insurance company to report the business and pay the premium tax.

State/Organization: Florida Surplus Lines Service Office
Name: Gary Pullen

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

The Surplus Lines (C) Task Force, in an effort to research an issue related to producer licensing of nonresident surplus lines writers, requests that you provide responses to the following two questions. As indicated below, the Task Force is soliciting comments on both questions from regulators, while interested parties need only respond to question #2.

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Yes, unless a state allowed courtesy filings (a resident agent, while not directly involved in the placement, is allowed to make the tax filing on behalf of the nonresident agent) or made provision for such policies to be reported on an independent (IPC) or direct procurement basis and taxes paid directly to the applicable states by or on behalf of the policyholder. Prior to 2005, Florida did not have a nonresident surplus lines license and such multi-state risks were reported on an IPC basis as Florida prohibited "courtesy" filings.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

See #1 above.

State/Organization: Colorado Division of Insurance

Name: Raymond Akers

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

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Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

Unlicensed non-resident brokers that can legally export insurance for risks located in states where they are not licensed into the surplus lines market have no statutory obligation to report that business or pay premium taxes to the affected state. The affected state also has no statutory means to require the unlicensed broker to report the policy and pay the premium tax.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

Require the surplus lines insurance company to report the business and pay the premium tax.

State/Organization: California Department of Insurance

Name: Premium Tax Audit Bureau

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

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Within your response, feel free to comment on other considerations not covered by the proposed questions. All comments must be received by the end of the business day September 16, 2009, and should be sent electronically to the attention of Bob Schump (NAIC Staff) at rschump@naic.org.

Regulators

1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.

An exemption from nonresident state producer licensing in situations where there is a multi-state risk would make it difficult for California to properly record and collect surplus lines premiums unless the proposed "multistate tax allocation form" is required to be filed with every state where premiums (risk) is allocated.

Regulators or Interested Parties

2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.

If the proposed "multistate tax allocation form" is required to be filed with every state where premiums (risk) is allocated, this would allow us to identify and collect premium taxes for multi-state exposures.

State/Organization: PIA National – September 18, 2009

Name: Pat Borowski, patbo@pianet.org

CC: David Eppstein, Mike Becker

Producer Licensing of Nonresident Surplus Lines Writers Questionnaire

The Surplus Lines (C) Task Force, in an effort to research an issue related to producer licensing of nonresident surplus lines writers, requests that you provide responses to the following two questions. As indicated below, the Task Force is soliciting comments on both questions from regulators, while interested parties need only respond to question #2.

Within your response, feel free to comment on other considerations not covered by the proposed questions. All comments must be received by the end of the business day September 16, 2009, and should be sent electronically to the attention of Bob Schump (NAIC Staff) at rschump@naic.org.

Regulators

PIA appreciates that NAIC only requested comment for this item from regulators. But providing our and our comments to you for and to this inquiry are central to NAIC fully understanding our view of surplus lines insurance producer licensing and, in our view, the lines of state/DOI authority.

- 1. Please explain whether an exemption from nonresident state producer licensing in situations where there is a multi-state risk would impact a state's ability to properly record and collect surplus lines premium tax.**

PIA Response: Is the situation referred to here a single account issued to an insured in the state in which the Surplus Lines Broker has their license – and the single account-insured has multi-state exposures (some in which the SL broker does not have a nonresident license) upon which surplus lines tax must be calculated and paid to several states?

- A. If this is the case – then the ancillary business exception to licensing should apply. BUT, the obligation to calculate & pay the Surplus Lines tax across & to multi-states still applies. And the broker has the obligation to comply in all affected states.
- B. The nonresident insurance producer licensing exception for ancillary business only means that the state is willing to provide a privilege in this case to an otherwise licensed insurance producer and except the fact of the nonresident licensing requirement in their state, but only to and under prescribed and limited circumstances. The state also does so as a condition of that state's continuing authority to decide HOW to regulate & enforce its oversight. And in doing so, the state is NOT otherwise vacating its right to compel compliance and exercise

enforcement of the balance of its state's requirements as they may apply to that insurance producer handling the ancillary insurance business exposure in their state.

- C. It is identical to the principal of "waiving in" per State Bar rules. The "nonresident" state bar permits you to "come in" without need to have or secure state bar licensure, but only under prescribed and limited circumstances and you are still required to know and comply with all the state's law and the state bar retains the right to compel and enforce you to do so.
- D. Given this – the "nonresident" state retains the same level of enforcement to compel the broker to accurately calculate and pay – and we'd argue that if the broker refuses to do so, the nonresident state has the grounds to revoke the licensing exception privilege and now require full nonresident licensure and expand the noncompliance/enforcement exposure.
- E. Further, the nonresident state also has the authority and right to present the problem it has with this producer's compliance to that broker's resident insurance department. Noncompliance in another state is a critical factor for resident (and perhaps even nonresident states) DOIs to consider, and it is clear in Surplus Lines in all 55-U.S. jurisdictions that surplus lines taxes are to be calculated and paid per the jurisdictions to which they are owed by the surplus lines broker or the Stamping offices where applicable.

Should Surplus Lines brokers only need to be licensed in their state of residence, but able to "place" Surplus Lines business in any jurisdiction without need of furthering licensing?

- A. Since 2004 when the FL federal court decisions made clear that surplus lines brokers are also eligible to secure nonresident insurance producer licenses through which they are able to conduct their business across state lines.
- B. If the example referred to here does not fit under the ancillary business exception discussed above – then a nonresident surplus lines license is required for the surplus lines broker to accept and place the insurance business.
- C. Clearly, the surplus lines broker under their nonresident license is obligated to comply with the surplus lines tax rules, and the state has direct authority to compel and enforce compliance.

Regulators or Interested Parties

- 2. Describe any alternative methods for states to identify and collect premium taxes for multi-state exposures that would not require nonresident producer licensing.**

I believe in a few states with annual state income tax in those laws clearly compels all business entities to report and pay all taxes that are owed the state irrespective of the area in which they apply, and further requires the entity to demonstrate evidence that such taxes were paid by them or by a 3rd-party on their behalf in the annual income tax form.

Further, in these states the surplus lines tax makes clear the obligation of the tax and for its payments is ultimately the responsibility of the insured, because the insured purchased the nonadmitted placement, is a resident and governed entity of the state and must assure that the state does not lose the insurance premium tax/surplus lines tax to which it is entitled.

Last, it requires all businesses to list any nonadmitted insurance coverage placements that they've made during the year on their tax return and must attach the surplus lines tax receipt for them.

This was done in recognition of and as a solution to the “independent procurements,” and avoiding a loss of rightful insurance premiums/surplus lines taxes being paid to the state.

Another approach that has been discussed is for these taxes to be reported and paid to states directly by the surplus lines insurers. However, the administration for the carrier is a challenge. The nature of surplus lines makes it more important that there is a state proportional tax assessment based on exposure locations. And that type of apportionment calculation would need to be applied per insurance policy/program placement far more often in surplus lines given its nature than in admitted lines (where aggregation and assignment by state is reasonable – and easier for carriers and states.).

So as a part of their contracted responsibilities, surplus lines carriers required their surplus lines contracted brokers to calculate and pay the tax to the appropriate states. Before 2004/2005 “technically” all surplus brokers operated ONLY on a resident basis, as the resident licensee and the “specialist” surplus lines broker, they were required to be the person to calculate and pay the taxes.

State Surplus Lines Stamping Houses were established in part for the more accurate recording of surplus lines placements and receipt of correct surplus lines taxes.

There are three central questions for states to address/update/clarify.

What does the surplus lines tax represent in terms of the states taxing these insurance placements based on premium?

What person has the actual/ultimate tax obligation, i.e. is it the insured; the surplus lines broker or the surplus lines carrier?

And what state authority is really creating and imposing the tax?

Today's Surplus Lines Taxing system is administered, because of licensing, insurance business practices and state management of decades ago. Much has changed since then, and all parties addressing this issue need to take care that we're not seeking a solution for a system developed and complicated by the past – and which is outdated.

Is the surplus lines tax really the equivalent for the surplus lines carriers that the state insurance premium tax is for the admitted carriers?

And if so, then isn't it the state (not DOI) that is charging and collecting this for their general revenue?

If yes, can the same insurance carrier premium tax system used for admitted carriers be expanded to be the process, platform and method by which surplus lines carriers report and pay their surplus taxes to each state?

And if this might be an option, for all parties at interests, a common method and approach to how these taxes are applied and accounted for across all states is critical.

Surplus lines carriers could execute their duties directly and/or continue to require their surplus lines brokers to do so on their behalf in full compliance with any state laws and/or could use the services of the stamping offices. In each case, the carrier would continue to hold the obligation to the state. If the carrier opted to execute through their surplus lines brokers and/or the stamping offices the carriers would retain the direct state obligation for the taxes and their compliance, but the carrier has contractually recourse to their brokers and/or the stamping offices.

PIA appreciates that we represent the retail insurance producer community – and not the surplus lines brokers per se. But as the retail insurance producer, PIA members generate a significant portion of the surplus lines placement made through licensed surplus lines brokers. As the primary insurance producer contact and interface with their insurance consumer, having a clear, common system promotes better transparency, clear understanding by the retail insurance producer generating better and consistent explanation and disclosure by PIA retail insurance producers to their customers. Currently, aside from the system being variable, to be honest, it can be unpredictable. That is a disadvantage to all. This is why PIA National has and continues to actively support the need, importance and progress of this working group.

The one thing that PIA National wishes to make clear is that the principal and primary obligation for knowing and fully complying with state surplus lines requirements, especially as applied to the entire area of surplus lines, is and remains that of the surplus lines broker (resident, nonresident or not), and the purpose of this “specialty” insurance producer license.

State DOIs should not, and the vast majority of states do not, require retail insurance producers to secure a surplus lines license in order to facilitate a surplus lines placement *so long as that producer is acting solely in their retail capacity, and placing with/through a properly licensed and authorized surplus lines broker*. And

any state that, regrettably, does impose an E&S license on the retail insurance producer in order to place a surplus lines policy does so is noncompliance with uniformity – and confuses the lines between retail and surplus lines insurance producers, their licenses and their obligations as assigned to each party.

Retail insurance producers have clear obligations in this area, but from their perspective and position in the transaction as licensed retail insurance producers. One of these is to present the cost of the nonadmitted insurance placement in full to the insured inclusive of surplus lines taxes as calculated and included by the surplus lines broker. And the retail insurance producer has the responsibility to assure the complete and timely collection of all the insurance premium, taxes and fees charged and due on the surplus lines placement from the insured and make timely payment to the surplus lines broker (among other duties). That aspect of their responsibilities is no different than that which we they have and execute to their admitted carriers.

However, retail insurance producers are not insurance premium taxes of their admitted insurers by those insurers. And retail insurance producers are not required or obligated or in anyway held accountable to be the expert resident/nonresident tax consultant, record, calculate and/or effect proper and complete payment of the insurance premium tax for any admitted placement that they make through a licensed and authorized wholesale insurance producer. Accordingly, neither should retail insurance producers be and/or required by contract to be responsible for any aspect of the determination, application, apportionment and/or process of surplus lines taxing obligation and system which is materially different than being responsible for the collection and remission of these costs from the insured to the surplus lines broker.

Thank you for this opportunity to comment and your time and consideration.

Pat Borowski
PIA National

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Draft: 10/2/09

Multi-State Surplus Lines Premium Tax (C) Working Group
Conference Call
September 16, 2009

The Multi-State Surplus Lines (C) Premium Tax Working Group of the Surplus Lines (C) Task Force met via conference call Sept. 16, 2009. The following Working Group members participated: Cindy Donovan, Chair (IN); Louis Quan, represented by Emma Hirschhorn (CA); Frank Goins, represented by John Love (KY); Larry Levine (NY); Randy Moses (SD); Kathy Wilcox (TX); and Brad Tibbetts (UT); Gloria Glover (AK); Pete Tavares (KS). Also participating was: Godwin Ohaechesi (TX).

Ms. Donovan summarized the changes made to the multi-state tax allocation reporting form that resulted from suggestions made during the previous conference call and from emails. The changes included:

- a separate tab containing lines of business numbers and descriptions
- state specific tax percentages updated
- a column to designate new, renewal, or endorsement transactions and the transaction dates
- corrected state formulas

Ms. Donovan acknowledged receipt of comments from the Council of Insurance Agents and Brokers that specifically cited the largest single problem their group encounters is tax allocation formulas that are inconsistent among the states. Ms. Donovan also acknowledged comments from NAPSLO that featured detailed corrections of an earlier version of the reporting form and suggestions for improving the current form.

Ms. Donovan mentioned the effort by Mr. Moses to research model law and how it relates to the reporting form. Mr. Moses stated that his state was considering proposing legislation that would give the commissioner discretion to use the multi-state reporting form in lieu of the state's current form and affidavit requirements. Mr. Moses further suggested this approach might be incorporated into the section of the model and the reporting form added as an appendix to that section. Because of the time anticipated for discussion regarding additional refinement to the reporting form, Ms. Donovan set aside consideration of the model law research until a later call.

Mr. Ohaechesi commented that the current form may not contain adequate information to meet the requirements of the stamping offices in many states. Mr. Ohaechesi suggested that an electronic spreadsheet would allow for more detailed information. Mr. Ohaechesi cited as example the form used by the International Motor Fuels Agreement (IMFA), an interstate compact among 48 states and 10 Canadian provinces that automatically shares motor carrier fuel, mileage, and tax allocation information with member jurisdictions. Ms. Donovan stated that the Working Group might consider a similar type of electronic format as a potential model.

Phil Ballinger (Surplus Line Stamping Office of Texas—SLOT) stated that the size limitations of the Excel reporting form would not accommodate the numerous and complicated data required by SLOT. Ms. Wilcox stated that she and others from the Texas Comptrollers Office are working on modifications to the IMFA format that would accommodate filing forms data needs. Mr. Ballinger also commented that the reporting form has a place for broker license numbers by state. Mr. Ballinger thought this was unnecessary because 1) the Nonadmitted and Reinsurance Reform Act would pre-empt the need for licensing in all states, 2) the drafters of SLIMPACT are in favor of a single state license, and 3) some states are considering the merit of nonresident state licenses just for tax filing purposes. Ms. Donovan reminded that these provisions are prospective and that currently, the vast majority of states still require non-resident licensure.

Ms. Donovan stated that an additional column would be added to the reporting form for policies that contain incidental exposures outside the United States so that all lines would total correctly.

Ms. Donovan stated that although many of the specific observations submitted by the interested parties (IPs) had been addressed, she would respond directly to the IPs at another time.

A discussion of tax payment dates discovered that there were about eight different dates on which states based their payment requirements (quarterly, semi-annual or annual). It was generally agreed that although some states would need to change, a single date on which to base all payment patterns would eliminate much of the confusion regarding when tax payments are due. This issue was tabled for additional consideration at next meeting. Reporting periods were also discussed and general

thinking was that the dates of March 1, June 1, Sept. 1, and Jan. 1 were logical. All dates would be for the previously concluded quarter (ex. March 1 reporting date would include the fourth quarter of the prior year, June 1 reporting date would include the first quarter of the current year, etc.). However, nothing definite was decided.

Ms. Donovan introduced the topic of attestations as a major topic for discussion. Roger Smith (Marsh USA) commented that roughly one-half of the states had statutes that contained specific language required for attestations or certifications. Mr. Smith agreed to send Ms. Donovan a list that outlines the requirements for each state. Referencing this information, the Working Group will consider at its next meeting whether it is possible to formulate a common attestation.

The next conference call is planned for Oct. 15.

Having no further business, the Multi-State Surplus Lines Premium Tax (C) Working Group adjourned.

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Draft: 9/21/09

Multi-State Surplus Lines Premium Tax (C) Working Group
Conference Call
August 25, 2009

The Multi-State Surplus Lines (C) Premium Tax Working Group of the Surplus Lines (C) Task Force met via conference call Aug. 25, 2009. The following Working Group members participated: Cindy Donovan, Chair (IN); Louis Quan (CA); Steve Parton (FL); Frank Goins (KY); Stewart Guerin (LA); Larry Levine (NY); Steve Johnson (PA); Randy Moses (SD); Kathy Wilcox (TX); and Brad Tibbetts (UT). Also participating was: Ann Fletcher (DE); and John Love (KY).

1. Status of Surplus Lines Survey

Ms. Donovan reported that a compilation of the Surplus Lines Survey responses is progressing. However, due to the number of survey questions and the variability and complexity of responses, it will require additional time. Ms. Donovan will update the Working Group at a later date.

2. Universal Premium Tax Reporting Form

Ms. Donovan stated that at the Summer National Meeting, the Surplus Lines Task Force assigned the Working Group a new charge: to research and develop a universal tax allocation reporting form.

As background, Ms. Donovan stated that certain alien insurers had proposed a surplus lines reporting form—commonly known as the “M” form—to many of the states. Ms. Donovan thought that the monthly reporting form, at three pages in length, would place excessive processing hardships on both brokers and regulators. Ms. Donovan and her staff, with assistance from Roger Smith of Marsh, created a spreadsheet format that would allow brokers to both report writings and specify tax allocations in the case of multi-state exposures. The spreadsheet, using Microsoft Excel software, would be relatively simple to use for a majority of brokers and regulators.

Mr. Moses inquired whether the form would be in lieu of, or in addition to, affidavits that are required in certain states. Ms. Donovan stated that it may be possible to include the affidavit wording on the form, as it is a long-term goal of the proposed form to eliminate as much paper as possible.

Mr. Levine asked how this form would address declination information currently captured in affidavits if it was used instead of the affidavits. Ms. Donovan stated that possibly for those states that require declinations, the form could be tailored on a state-by-state basis.

Several regulators posed questions regarding situations applicable to their respective states, such as the need for policy numbers, invoice dates, and shares in subscription policies that the form in its initial layout did not include. Ms. Donovan stated that many of the special information needs of individual states could be incorporated in subsequent spreadsheet revisions. In addition, the form could contain notes regarding specific state information that would remain hidden until needed. Several regulators suggested that the NAIC numbering convention for lines of business be substituted for type of insurance (e.g., P&C, Casualty, Liability).

Ms. Fletcher suggested moving the total columns from the far right side of the form to the left side next to the policy information to allow for a quick overview.

Phil Ballinger (Surplus Lines Stamping Office of Texas) stated that although many of the larger states with stamping offices have already transitioned to electronic filing, Texas is also working on a spreadsheet to accommodate those brokers unfamiliar or uncomfortable with electronic filing. Mr. Ballinger stated that little additional information would be required of the proposed form to be acceptable in Texas.

Dan Maher (Excess Line Association of New York) stated that this form may prove to be a good interim step in simplifying the surplus lines reporting and tax process. However, Mr. Maher cautioned that several points may impede progress, such as the need for a universal tax allocation formula to replace the current formulas that vary by state, differing tax payment dates, and the reluctance of some states to allow a universal form to supplant the compliance form required for home state placements.

Mr. Smith stated that if only 10 states initially adopted the proposed form, Marsh would regard this as significant progress. He has noted progressive changes in some states that have extended the filing period to 60 days from 30 days. Mr. Smith stated that incremental change is still change, and it is welcomed.

Mr. Love asked for industry's first preference of either a universal filing form or a universal allocation formula.

Mr. Smith responded that both form and formula will be ultimately necessary. Steve Stephan (NAPSLO) stated that the universal form would be easier to implement, as a universal allocation formula likely would require changes to many states' statutes or regulations.

Ms. Donovan asked that any additional comments or recommendations for the form be sent to NAIC staff. She stated her intent to update the proposed universal form with the suggested changes and asked that Randy Moses (SD) and NAIC staff look over applicable model laws.

Having no further business, the Multi-State Surplus Lines Premium Tax (C) Working Group adjourned.

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Draft: 9/17/09

**2010 PROPOSED CHARGES
SURPLUS LINES (C) TASK FORCE**

The mission of the Surplus Lines (C) Task Force is to monitor the surplus lines market and its operation and regulation, including the activity and financial condition of U.S. and non-U.S. surplus lines insurers by providing a forum for discussion of issues and to develop or amend model regulation.

Ongoing Maintenance of NAIC Programs, Products or Services

1. Maintain the IID Plan of Operation and its requirements relating to standards for inclusion on the NAIC Quarterly Listing of Alien Insurers ("Quarterly Listing") concerning capital and/or surplus funds, U.S. trust accounts and fitness of management among other criteria. This charge is on-going and will be assumed by the IID Plan of Operation Review Group — *Essential*
2. Provide NAIC/IID financial staff guidance and expertise relative to regulatory policy and practices with respect to individual companies and Lloyd's syndicates that are either listed on or seeking admission to the Quarterly Listing. This charge is on-going and will be assumed by the Surplus Lines Financial Analysis Working Group. The authority of the working group is limited to that of an advisory body, with a goal of formulating recommendations to the Chairs of the Task Force and Property/Casualty Insurance Committee for the appropriate regulatory response. Issues upon which the Surplus Lines Financial Analysis Working Group may formulate a recommendation might include, but are not limited to, approval or disapproval of applicants to the Quarterly Listing, delisting of listed insurers, changes to trust fund requirements, or placement of limitations or restrictions on a listed insurer's business activity in the United States — *Essential*
3. Perform financial analysis of surplus lines market utilizing the NAIC Financial Data Repository and other sources in order to prepare a regulator report — *Important*
4. Consider a uniform method of allocating and/or reporting surplus lines and independently procured insurance premium tax on multi-state risks and any other surplus lines issues. This charge is assumed by the Multi-State Surplus Lines Premium Tax Working Group — *Essential*

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