



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on September 25, 2006 representing the position of the New York State Insurance Department.

Re: Applicability of Section 9101(b) of the Insurance Law with regard to calculating excess line premium taxes

Questions Presented:

1. Are fees that are charged by the insurer, such as policy fees or inspection fees, considered part of the premium and thus subject to the excess line premium tax?
2. Are these fees subject to the stamping fee?

Conclusions:

1. Yes, fees that are charged by the insurer, such as policy fees and inspection fees, are considered part of the premium and are subject to the excess line premium tax.
2. Yes, fees that are charged by the insurer, such as policy fees and inspection fees, are considered part of the premium and are subject to the stamping fee.

Facts:

No specific fact pattern was presented.

Analysis:

Excess line premium taxes to the Superintendent are imposed on a licensed excess line broker.

N.Y. Ins. Law 2118(d)(1) (McKinney 2006) requires that all excess line brokers:

[p]ay to the superintendent a sum equal to three and six-tenths percent of the gross premiums charged the insureds by the insurers for insurance procured by such licensee pursuant to such license, less the amount of such premiums returned to such insureds. Where the insurance covers property or risks located or resident both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (b) of section nine thousand one hundred two of this chapter less the amount of gross premiums allocated to this state and returned to the insured.

To determine the amount of gross premiums that are taxable, N.Y. Ins. Law § 9102(b) (McKinney 2000)¹ states:

(b)(1) In determining the amount of gross premiums taxable in this state pursuant to paragraph one of subsection (d) of section two thousand one hundred eighteen of this chapter, where a placement

of excess line insurance covers property or risks located or resident both in and out of this state, the sum paid to the superintendent shall be computed on that portion of the policy premium that is attributable to property or risks located or resident in this state, as determined by reference to an allocation schedule prescribed by the superintendent in a regulation.

N.Y. Ins. Law § 9101(b) (McKinney 2000) defines premium as:

[I]ncludes all amounts received as consideration for insurance contracts or reinsurance contracts, other than for annuity contracts, and includes premium deposits, assessments, policy fees, membership fees, and every other compensation for such contract.

Policy fees paid to the insurer are included in the definition of premium under § 9101(b), and thus are considered part of the premium and are subject to the excess line premium tax.

Inspections are normally carried out by the insurer itself (via their agents or other employees). Even when the inspection fee is a separate charge, it is still considered consideration for the insurance contract under 9101(b), and is subject to the excess line premium tax.

Service fees² paid to an insurance broker by the insured are not included in the definition of "premium" under Section 9101(b) of the Insurance Law. These service fees are not subject to the excess line premium tax because they are not received as consideration for an insurance contract.

Stamping Fee

N.Y. Ins. Law § 2130 (McKinney 2006) states:

(f) The services performed by the [Excess Line] association shall be funded by a stamping fee assessed for each declarations page, cover note or other premium bearing document submitted to the association. The stamping fee shall be established by the board of directors of the association from time to time and shall be subject to approval by the superintendent. The stamping fee shall be paid by the excess line licensee. Provided, however, the licensee shall be allowed to receive and collect from the insured the stamping fee if the licensee obtains a written memorandum, signed by the insured, specifying the amount and the insured's agreement to pay the stamping fee.

Further, N.Y. Ins. Law § 2118 (McKinney 2006) states:

(b) [Eff. until July 1, 2009, pursuant to L.1988, c. 630, § 5.]

(1) Within forty-five days after a policy is procured, a licensee shall submit the declarations page or cover note of every policy procured under his or her license to the excess line association established pursuant to section two thousand one hundred thirty of this article for recording and stamping. In the event that no declarations page or cover note is available to the licensee, within forty-five days after the policy is procured, the licensee shall submit a binder to the excess line association in lieu of such declarations page or cover note. In the event that a binder is submitted to the excess line association, the licensee shall submit the declarations page or cover note to the excess line association promptly upon receipt. Every insurance document submitted to the excess line association pursuant to this subsection shall set forth:

- (A) the name and address of the insured;
- (B) the gross premium charged;
- (C) the name of the unauthorized insurer; and
- (D) the kind of insurance procured.

(2) Subsequent endorsements which do not affect the premium charged are exempted from stamping.

The stamping fee calculation is based on the amount of premium. Any fee charged by the insurer that is considered part of the premium must be included when calculating the stamping fee. As discussed above, fees that are charged by the insurer, such as policy fees and inspection fees, are considered part of the premium and are subject to the stamping fee.

For further information you may contact Senior Attorney Elizabeth Barrett at the New York City Office.

¹ See ~~also~~ Section 27.9 of N.Y. Comp. Codes R. & Regs. tit. 11, part 27 (2004) (Reg. 41) concerning allocation of the premium tax.

² See N.Y. Ins. Law § 2119 (McKinney 2006) and Section 27.12 of N.Y. Comp. Codes R. & Regs. tit. 11, part 27 (2004) (Reg. 41) concerning service fees.