

August 23, 2007

Re: Policy Fees and Inspection Fees Charged by Excess Line Insurers

The Office of General Counsel of the New York State Insurance Department has recently issued two opinions which state that **Policy Fees charged by an excess line insurer** are to be considered excess line premium subject to the excess line tax and the ELANY stamping fee. The rationale for this opinion, essentially, is as follows:

Premium is defined as all amounts charged/received by an insurer as consideration for an insurance contract....including....policy fees.... [New York Insurance Law Section 9101(b)]. Since an excess line insurer has "freedom of rate" attaching a label such as "policy fee" to some of the costs to acquire an insurance policy instead of using the word "premium" should not result in a loss of tax revenue to the state.

Please note this does not in any way affect "broker service fees", which you can charge pursuant to Section 2119 of the Insurance Law, as long as you obtain a signed memorandum (Total Cost Form) whereby the insured agrees to pay such charges. Broker/Producer service fees are not subject to excess line tax nor the ELANY stamping fee.

ELANY has obtained the Department's consent to implement the taxation of policy fees as follows:

1. Policy Fees, charged by an insurer on all policies effective on and after September 1, 2007, will be subject to excess line tax and ELANY stamping fees.
2. All such policy fees should be reported as "**endorsement**" transactions. These fees should **NOT** be combined into one sum on your Part A affidavit nor the Batch Filing Report.
3. All policy fees, charged by an insurer, should be set forth on binders, confirmations of coverage, declarations pages and cover notes. Insurance Law Section §2118(b)(1)(B) states every insurance document submitted to ELANY....shall set forth...the gross premium charged. Since "Policy Fees" charged by an insurer are defined as "Premium", these fees should be disclosed on the coverage document.
4. Excess line insurers should not include on binders, confirmations of coverage, declarations pages and cover notes, excess line tax, stamping fees nor broker/producer fees. Broker/producer fees should be disclosed to insureds in the Total Cost Form.

5. When making an initial or first submission of a binder, confirmation of coverage, declarations page or cover note, which contains a policy fee, simply submit the document with affidavits, showing the stated premium on one line in the Batch Filing Report and submit the policy fee referencing the same stampable document on the very next line of the Batch Filing Report as an endorsement.
6. ELANY has amended the Total Cost Form to accommodate the calculation of tax and stamping fees on insurer charged policy fees. These changes are also being made to ELANY's online affidavit creation system. Attached are two new Total Cost Forms (one for tax allocated transactions and one for non-tax allocated transactions) with highlighted instructions to point out the changes made.

Inspection Fees

The opinions issued by the Insurance Department also state limited circumstances under which inspection fees are taxable as excess line premium and subject to the ELANY stamping fee. The opinions state that when an insured pays the inspection fee directly to the insurer or directly to an inspection service, designated by the insurer, then the inspection fee is to be considered premium, subject to the excess line tax.

If the excess line broker or retail broker is selecting the inspection service of its choice or if the inspection fees are not paid directly by the insured to the insurer or inspection service, the inspection fee is not taxable.

Taxable inspection fees should be reported in the same manner as taxable policy fees stated above.

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