

# State of Delaware



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## Department of Insurance

### SURPLUS LINES BULLETIN NO. 6

#### PREMIUM TAX ON SURPLUS LINES INSURANCE DEFINITION OF TAXABLE PREMIUM

There has been some question about the treatment of policy fees when reporting premium amounts used to calculate insurance premium tax due to the State of Delaware on surplus lines insurance written in this State. The purpose of this Bulletin is to clarify the definition of taxable premium according to Delaware law, and to instruct surplus lines brokers in the proper reporting and calculation of premium tax.

It is the Department's position that insurance premium tax should be calculated on premiums including any associated fees in consideration for surplus line insurance policies. The Department bases its position on the following:

Chapter 19 of the Delaware Code, Title 18, deals exclusively with surplus line insurance. Section 1917 provides for a tax on surplus line insurance, which shall be computed on premiums received, exclusive of sums collected to cover federal and state taxes and examination fees, if any. This tax shall be at the same rate as applies to premiums for like kinds of insurance written by authorized insurers under Title 18.

Chapter 7 of Title 18, addresses the general premium tax provisions as they apply to authorized insurers. 18 Del. C., § 702(a) requires all insurers to report gross direct premium income, *including policy, membership and other fees, assessments and all other considerations for insurance (emphasis added)* on risks located in this State, after deducting amounts for returned premiums on cancelled policies and the unabsorbed portion of any deposit premium and the amount returned to policyholders as dividends and similar returns, whether paid in cash or used for reduction of premiums. 18 Del. C., § 702(c)(1) specifies a tax rate of 1.75% and § 707(a) specifies an additional .25%, for a total premium tax of 2%, upon this gross direct premium income as reported according to § 702(a).

In addition, 18 Del. C., § 2703 defines premium as "the consideration for insurance by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or other charge in consideration for an insurance contract is deemed part of the premium."

Therefore, it is determined that all surplus lines brokers must consistently include all associated policy fees in the calculation of taxable premium, and submit payment of insurance premium taxes based on policy premium including policy fees as required in Title 18. This ruling shall be effective immediately.

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