

### Part 3

## Taxation of Surplus Lines, Illegal Transactions, and Captive Insurance Companies

### 31A-3-301 Tax imposed on surplus lines insurance transactions.

- (1)
  - (a) An insurance transaction under Section 31A-15-103 is subject to a tax of 4-1/4% of gross premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.
  - (b) "Gross premium," for a surplus lines insurance transaction, means the monetary consideration for an insurance policy including the fees charged to the insured, however designated.
- (2) The tax imposed by this section does not apply to:
  - (a) ocean marine insurance;
  - (b) insurance premiums paid by institutions within the state system of higher education as specified in Section 53B-1-102; or
  - (c) annuities.
- (3) The department shall deposit a tax imposed by this section in the General Fund.
- (4)
  - (a) A county, city, or municipality within the state may not impose an occupation tax or other tax or fee on a surplus lines insurance transaction.
  - (b) Notwithstanding Subsection (4)(a), an insurer, producer, or policyholder may be subject to other taxes not described in Subsection (4)(a).

Amended by Chapter 275, 2011 General Session

### 31A-3-302 Tax on illegal transactions.

An insurance transaction under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups, which violates the restrictions placed on transactions by that chapter shall be taxed at a rate four percentage points higher than the applicable rate under Section 59-9-101.

Amended by Chapter 2, 1987 General Session

### 31A-3-303 Payment of tax.

- (1)
  - (a) An insurer, the producers involved in the transaction, and the policyholder are jointly and severally liable for the payment of the taxes required under Section 31A-3-301.
  - (b) The policyholder's liability for payment of the premium tax under Section 31A-3-301 ends when the policyholder pays the tax to a producer or an insurer.
  - (c) The insurer and the producers involved in the transaction are jointly and severally liable for the payment of the additional tax required under Section 31A-3-302.
  - (d) Except for the tax under Section 31A-3-302, the policyholder shall pay a tax under this part and shall be billed specifically for the tax when billed for the premium.
  - (e) Except for the tax imposed under Section 31A-3-302, absorption of the tax by the producer or insurer is an unfair method of competition under Sections 31A-23a-402 and 31A-23a-402.5.
- (2)

- (a) The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, producers, and policyholders to use in determining the amount of taxes owed under this part, and the manner and time of payment.
- (b) If a tax is not paid within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.
- (3) Upon making a record of its actions, and upon reasonable cause shown, the commissioner may waive, reduce, or compromise any of the penalties or interest imposed under this part.
- (4) Subject to Section 31A-3-305, if a policy covers risks that are only partially located in this state, for computation of tax under this part the premium shall be reasonably allocated among the states on the basis of risk locations. However, the premiums with respect to surplus lines insurance received in this state by a surplus lines producer or charged on policies written or negotiated in or from this state are taxable in full under this part, subject to a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.
- (5) Subject to Section 31A-3-305, the premium taxes collected under this part by a producer or by an insurer are the property of this state.
- (6) If the property of a producer is seized under any process in a court in this state, or if a producer's business is suspended by the action of creditors or put into the hands of an assignee, receiver, or trustee, the taxes and penalties due this state under this part are preferred claims and the state is to that extent a preferred creditor.

Amended by Chapter 62, 2011 General Session

Amended by Chapter 275, 2011 General Session

**31A-3-304 Annual fees -- Other taxes or fees prohibited -- Captive Insurance Restricted Account.**

- (1)
  - (a) A captive insurance company shall pay an annual fee imposed under this section to obtain or renew a certificate of authority.
  - (b) The commissioner shall:
    - (i) determine the annual fee pursuant to Section 31A-3-103; and
    - (ii) consider whether the annual fee is competitive with fees imposed by other states on captive insurance companies.
- (2) A captive insurance company that fails to pay the fee required by this section is subject to the relevant sanctions of this title.
- (3)
  - (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under the laws of this state that may be levied or assessed on a captive insurance company:
    - (i) a fee under this section;
    - (ii) a fee under Chapter 37, Captive Insurance Companies Act; and
    - (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company Act.
  - (b) The state or a county, city, or town within the state may not levy or collect an occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii) against a captive insurance company.
  - (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115 against a captive insurance company.

- (d) A captive insurance company is subject to real and personal property taxes.
- (4) A captive insurance company shall pay the fee imposed by this section to the commissioner by June 1 of each year.
- (5)
  - (a) Money received pursuant to a fee described in Subsection (3)(a) shall be deposited into the Captive Insurance Restricted Account.
  - (b) There is created in the General Fund a restricted account known as the "Captive Insurance Restricted Account."
  - (c) The Captive Insurance Restricted Account shall consist of the fees described in Subsection (3)(a).
  - (d) The commissioner shall administer the Captive Insurance Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Captive Insurance Restricted Account to:
    - (i) administer and enforce:
      - (A) Chapter 37, Captive Insurance Companies Act; and
      - (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and
    - (ii) promote the captive insurance industry in Utah.
  - (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing, except that at the end of each fiscal year, money received by the commissioner in excess of the following shall be treated as free revenue in the General Fund:
    - (i) for fiscal year 2015-2016, in excess of \$1,250,000;
    - (ii) for fiscal year 2016-2017, in excess of \$1,250,000; and
    - (iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.

Amended by Chapter 244, 2015 General Session

**31A-3-305 Agreement related to nonadmitted insurance taxes.**

- (1) As used in this section:
  - (a) "Agreement" means a cooperative agreement, reciprocal agreement, or compact with one or more other states.
  - (b)
    - (i) "Home state," except as provided in Subsections (1)(b)(ii) and (iii), with respect to an insured, means:
      - (A) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
      - (B) if 100% of the insured risk is located out of the state described in Subsection (1)(b)(i)
        - (A), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
    - (ii) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state determined under Subsection (1)(b)(i) of the member of the affiliated group that has the largest percentage of premium attributed to it under the nonadmitted insurance contract.
    - (iii)
      - (A) When a group policyholder pays 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group policy holder.
      - (B) When a group policyholder does not pay 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group member.

- (c) "Principal place of business," for purposes of determining the home state of an insured, means:
  - (i) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities;
  - (ii) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or
  - (iii) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- (d) "Principal residence," with respect to determining the home state of an insured, means:
  - (i) the state where the insured resides for the greatest number of days during a calendar year; or
  - (ii) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- (2) The commissioner may enter into an agreement to:
  - (a) facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance;
  - (b) provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications; and
  - (c) share information among states relating to nonadmitted insurance premium taxes.
- (3) If the commissioner enters into an agreement under Subsection (2), the following apply:
  - (a) In addition to the full amount of gross premiums charged by the insurer for the insurance, a surplus lines producer shall collect and pay to the commissioner a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines producer.
  - (b) When surplus lines insurance covers property, risks, or exposures located or to be performed in and out of this state, the sum payable is calculated as follows:
    - (i) calculate an amount equal to the applicable tax rates under this part on that portion of the gross premiums allocated to this state pursuant to the agreement;
    - (ii) add to the amount under Subsection (3)(b)(i) an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed outside of this state pursuant to the agreement; and
    - (iii) subtract from the amount under Subsection (3)(b)(ii) the amount of gross premiums allocated to this state and returned to the insured.
  - (c) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines producer. A surplus lines producer may not absorb or rebate, for any reason, any part of the tax.
- (4) The commissioner may participate in a clearinghouse established through an agreement described in Subsection (2) for the purpose of collecting or disbursing to reciprocal states any money collected pursuant to Subsection (3) applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into an agreement with this state, the state shall retain the net premium tax collected.

- (5) The commissioner may adopt an allocation schedule included in an agreement described in Subsection (2) for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures reside.
- (6) The commissioner may apply the definition of "home state" in Subsection (1) when implementing an agreement described in Subsection (2).
- (7) The commissioner shall report to the Business and Labor Interim Committee regarding the nature and status of any agreement into which the commissioner enters under Subsection (2).

Enacted by Chapter 275, 2011 General Session