

# Technical Advisory



**TA 319**

**July 17, 2015**

**Subject: NIMA Withdrawal and Surplus Lines Tax Reporting  
LDI Bulletin 2015-06**

**Background:** Effective October 1, 2015, Louisiana will withdraw from the Nonadmitted Insurance Multi-state Agreement (NIMA) and the NIMA sponsored Surplus Lines Clearinghouse. Furthermore, Louisiana will no longer share surplus lines tax revenue with the NIMA participating states.

Bulletin 2015-06 provides guidance for calculating, reporting, and paying surplus lines taxes as a consequence of the withdrawal of Louisiana from NIMA and the reduction of the surplus lines tax rate.

Bulletin 2015-06 also provides notice of changes in Form 438 necessitated by Acts 2015 No. 193, and codified at La. R.S. 22:438.

The tax on all surplus lines transactions that have an effective date on or after October 1, 2015 shall be at the rate of 4.85% in lieu of the current rate of 5.00%, pursuant to Acts 2015 No. 386, and codified at La. R.S. 22:439.

**Main Points:** New and renewal multi-state policies dated before October 1, 2015 remain subject to the NIMA rules and to reporting through the Surplus Lines Clearinghouse.

Effective July 1, 2015, the transaction fee charged by the Surplus Lines Clearinghouse will be reduced to 0.175% instead of 0.3%.

There is no change to the reporting and paying of the surplus lines tax for a new or renewal, single-state policy with an effective date before October 1, 2015.

Any surplus lines policy with an effective date before October 1, 2015 shall continue to be taxed at the rate of 5.00%, and any endorsement, cancellation, change in coverage, or other premium transaction related to such policy that has an invoice date before October 1, 2015 and that causes an addition to or refund of tax or additional or return premium attributable to such policy shall also be taxed or refunded at the rate of 5.00%.

For a single-state policy with an effective date before October 1, 2015 to obtain a refund for taxes paid at the 5.00% rate, it will be necessary for the broker to amend the surplus lines tax return for the quarter in which the tax was originally reported and paid.

### **After Withdrawal from NIMA**

For a new or renewal policy, or any other taxable transaction, with an effective date on and after October 1, 2015 the surplus lines broker will calculate, report, and pay surplus lines premium taxes at the 4.85% tax rate for any multistate policy for which Louisiana is the home state of the policyholder as defined in La. R.S. 22:46(8.1) in the same manner as for a single-state policy.

The gross taxable premium for all such surplus lines transactions shall consist of the entire premium, as defined in La. R.S. 22:46(13), whether allocable to Louisiana or any other jurisdiction, unless there is a specific exemption.

### **Quarterly Tax Reporting and "Zero Reports"**

Effective October 1, 2015, there will be several changes to surplus lines reporting.

A surplus lines broker placing Louisiana home-state business shall file a quarterly surplus lines tax report for the quarter in which the business is transacted and shall file an annual certification of the accurate reporting of all Louisiana home-state business during the calendar year no later than March 1 of the following year.

For a prior calendar quarter in which a surplus lines broker has no Louisiana home-state surplus lines premium to report, the broker is not required to file a quarterly surplus lines tax report or "zero report."

A surplus lines broker is required to file an annual report no later than March 1 of the following year wherein the broker must certify the reporting of all surplus lines business conducted during the prior calendar year, or certify the absence of any business during the prior calendar year.

### **Tax Exemptions**

Effective July 1, 2015, La. R.S. 22:439(0), as amended and reenacted by Acts 2015 No. 386, exempts two categories of purchasers from the tax on surplus lines insurance.

The first category is any "college, university, school, institution, or program that is under the supervision or management of a system board of supervisors provided for in [La.] R.S. 17:3215 through 3217.1." The boards referred to are those for

Louisiana State University, Southern University, University of Louisiana, and the Louisiana Community and Technical College.

The second category is any political subdivision "having a population of not less than three hundred fifty thousand persons according to the latest federal decennial census." According to the 2010 U.S. Census, only East Baton Rouge Parish and Jefferson Parish meet the population requirement.

There is no definition of "political subdivision" in the Louisiana Insurance Code. There are many definitions throughout the Revised Statutes that relate to specific purposes and programs. According to Art. VI §44(2) of the La. Const. of 1974, "political subdivision" means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

Any purchaser of insurance claiming the political subdivision exemption must provide legal authority to the surplus lines broker to substantiate the purchaser's legal status as a political subdivision.

Effective October 1, 2015, Acts 2015 No. 386 repeals the exemption for "subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside of this state." This repeal is necessary for the expansion of Louisiana's tax jurisdiction to include multistate surplus lines premium allocable to property, risk, or exposure located outside Louisiana.

### Form 438

Acts 2015 No. 193 becomes effective August 1, 2015 and creates a new category of insurer -- the domestic surplus lines insurer. With the addition of "domestic surplus lines insurer" to the vocabulary, references to "approved unauthorized" and "eligible unauthorized" insurers are changed where appropriate to simply state "surplus lines insurers," as now defined at La. R.S. 22:46(17).

The Acknowledgement of Applicant for Personal Lines Insurance in the Surplus Lines Market, Form 438, incorporates the changed terminology, and an updated version of Form 438 will be promulgated simultaneously with the issuance of Bulletin 2015-06 and will be posted on the LOI website.

Questions or clarifications regarding Bulletin 2015-06 should be directed to the Director, Premium Tax Division, Office of Management and Finance, either by email at [taxdivision@ldi.la.gov](mailto:taxdivision@ldi.la.gov) or by telephone at (225) 342-1012.

Baton Rouge, Louisiana, this 15th day of July 2015.

**Necessary Action:** Please distribute LDI Bulletin 2015-06 to all agency personnel that work with surplus line companies.

**Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.**