

October 11, 1988

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 21 (1988)

TO: ALL LICENSED EXCESS LINE BROKERS

SUBJECT: PREMIUM TAX ALLOCATION

It has come to the Department's attention that certain excess line brokers have not paid excess line taxes based upon the entire policy premium on policies covering exposures located both within and without the State of New York. Instead, these excess line brokers determine what portion of the risk is attributable to New York and the excess line tax is then paid on the allocated portion of the premium.

This Circular letter is to remind all excess line brokers, that such allocation of the premium tax is unacceptable and in violation of the Insurance Law. Where a single policy covers exposures located both within and without the State of New York, the total premium is subject to the excess line tax.

This issue was previously addressed in an Office of General Counsel Informal Opinion which was published in the September, 1973 issue of the Insurance Department Monthly Bulletin. Section 2118(d) of the New York Insurance Law imposes a premium tax on a licensed excess line broker based upon the total premium charged to the insured by the unauthorized insurer for insurance procured by the excess line broker pursuant to such license. Section 2117 of the New York Insurance Law enumerates specific provisions under which a licensed insurance broker may negotiate or place insurance with an insurer not authorized to do business in New York. Such policies procured pursuant to Section 2117 are not subject to the tax. However, except for certain limited situations as specified therein, for example marine insurance, section 2117 does not permit a licensed insurance broker to procure a single policy covering exposures located both within and without the

State of New York. Such a policy can only be procured pursuant to an excess line broker's license pursuant to section 2118. Therefore, the premium tax on the entire policy premium is due to the State of New York.

All licensed excess line brokers are requested to acknowledge receipt of this letter, within 15 days of its date, and provide this Department with a signed statement of its compliance with the contents of this letter. A signed statement containing corrective procedures should accompany the acknowledgment from those licensees who have been utilizing allocation methods.

Acknowledgments and accompanying statements should be sent to:

Stephen R. Solomon
Principal Insurance Examiner
Insurance Exchange & Excess Line Bureau
New York State Insurance Department
160 West Broadway

New York NY 10013

Very truly yours,

[SIGNATURE]

WENDY E. COOPER

Acting Superintendent of Insurance