

## WV - Surplus Lines License and Premium Tax Changes

Applicant must be a licensed property and casualty producer for the type(s) of insurance the applicant expects to export to the surplus lines market for at least 3 consecutive years immediately preceding the date of application, and must:

- a. have held a valid West Virginia resident or nonresident individual insurance producer's license for at least 1 of those 3 years; or
- b. hold a valid surplus lines broker license issued by another state.

Non Resident License applications must be submitted using the NAIC Uniform Application for Individual Insurance Producer License.

For Residents, the application can be submitted either online through the National Insurance Producer Registry (NIPR) or by printing and mailing the form to the Office of the Insurance Commissioner.

The insurance producer that performed the diligent search (which may be the surplus lines broker who ultimately places the coverage) and the insured must fill out an affidavit - the Due Diligence Form (Form DDF) - attesting to the diligent effort to place the coverage with admitted insurers and the results of the effort.

### 1. For policies effective prior to 7/1/2011:

- a. 4.00% of gross premiums and gross fees is charged, less return premiums on which tax has been previously paid. The tax is designated for the municipal pensions and protection fund.
- b. 0.55% policyholder surcharge on taxable premium for each fire and casualty policy.

### 2. For policies effective on and after 7/1/2011, the tax rate is 4.55% of gross premiums and gross fees on policies wholly in West Virginia, as well as for multi-state risk policies for which the insureds home state is West Virginia.

- a. 88% of the tax collected is disbursed in accordance with WV ST § 33-12C-7, to a special account in the State Treasury designated for the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund.
- b. 12% of the tax collected is disbursed in accordance with WV ST § 33-3-33(d) to the State Treasury for the benefit of public employees and fire protection.

## REPORTING FORM AND PAYMENT OF TAX

1. All surplus lines licensees must pay surplus lines taxes owed in quarterly installments. The first three quarterly payments are due on the 25th day of the month following the end of the calendar quarter, as shown below. Payment for the fourth quarter is due with the submission of the annual report on or before March 1 next following the end of the calendar year (See items 7 and 8 below).

TAX PERIOD Q1. January 1 - March 31 DUE ON OR BEFORE April 25

TAX PERIOD Q2. April 1 - June 30 DUE ON OR BEFORE July 25

TAX PERIOD Q3. July 1 - September 30 DUE ON OR BEFORE October 25

2. The Quarterly Tax Payment Form and quarterly tax payment can be submitted either electronically through OptIns or by mailing a hard copy of the form along with a check to the Office of the Insurance Commissioner.

a. The Form can be accessed at the following website: <https://bit.ly/3RbQB9R> under the "Taxes - Surplus Lines Licensee" heading.

b. To submit the form electronically, click on "OPTins".

c. To access the hard copy form, click on "Quarterly Tax Form - Licensee".

3. A surplus lines licensee that does not owe any taxes for any of the first three calendar quarters may, in lieu of submitting the Quarterly Tax Payment Form, submit an abbreviated form through the website of the Insurance Commissioner to verify that no taxes are owed.

a. The form can be accessed at the following website: <https://bit.ly/3RbQB9R> Under the "Taxes - Surplus Lines Licensee" heading, click on "Online Tax Quarterly Filing (OPTION FOR ZERO FILERS ONLY)."

b. "Zero filings" are not accepted through this option for the fourth quarter. All surplus lines licensees must complete the Annual Tax Packet.

4. On or before March 1st of each year, each surplus lines licensee must file with the Insurance Commissioner the Annual Tax Packet, to:

a. report the details of all surplus lines transactions from the preceding calendar year; and

b. determine the final 4th quarter tax payment.

5. The surplus lines transaction details must be set out on three separate forms in the Annual Tax Packet:

a. Form LEB 4B - Annual Report of Written Surplus Lines Policies (for West Virginia single-state policies);

b. Form LEB 4C - Annual Premium Tax Allocation Report (for multi-state policies); and

c. Form LEB EXEMPT - Annual Report of Written Surplus Lines Policies that are exempt from taxation.

6. The report must include, for each surplus lines policy:

a. the identity of the insurer(s);

b. the policy number;

c. the date the new or renewal premium was received;

d. the amount of any returned premium and the date such premium was returned;

e. gross premiums written; and

f. fees received.

7. The surplus lines licensee must use Form LEB4A - Annual Surplus Lines Tax Reconciliation - to determine the final 4th quarter tax payment.

a. The report includes the following information:

- I. aggregate gross premiums written;
- II. aggregate return premiums; and
- III. amount of aggregate tax previously remitted to the state in 1st, 2nd, and 3rd quarter tax prepayments; and
- IV. prior year tax overpayments applied to the current year tax liability.

b. Certain fields in Form LEB4A will prepopulate using the individual policy premium information filled out in forms LEB4B and LEB4C.

8. The Annual Tax Packet and the 4th quarter tax payment can be submitted either electronically through OptIns or by mailing a hard copy of the packet along with a check to the Office of the Insurance Commissioner.

a. The Annual Tax Packet can be accessed at the following website: <https://bit.ly/3RbQB9R> under the "Taxes - Surplus Lines Licensee" heading.

b. To submit the form electronically, click on "OPTins".

c. To access the hard copy form, click on "Annual Tax Packet - Licensee".

Records of surplus lines coverages procured for insureds whose home state is West Virginia must be kept by the surplus lines licensee for examination by the Commissioner.

a. Records must be retained for at least 10 years following termination of the contract.

b. Records must show the following information:

- I. name and address of insurer(s);
- II. name and address of insured(s);
- III. amount of insurance;
- IV. gross premium charged;
- V. amount of tax collected from insured;
- VI. return premium paid, if any;
- VII. premium rate per item;
- VIII. effective date and terms of contract;
- IX. a brief general description of the risks insured against and the property insured;
- X. the policy number;
- XI. written due diligence declaration; and
- XII. any additional information as required by the Commissioner.