

**DEPARTMENT OF INSURANCE**

ADMINISTRATION &amp; LICENSING SERVICES BRANCH

LICENSING SERVICES DIVISION

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**NOTICE****TO:** All Admitted Insurers and Surplus Line Brokers**DATE:** October 27, 2008**SUBJECT:** Guidelines for Waiver of Penalty for Non-Use of Electronic Fund Transfer (EFT) and for Non-Timely Payment of Taxes**EFT Payments**

Pursuant to California Insurance Code (CIC) Sections 1775.8(c)(1) and 12976.5(c)(1), any surplus line broker or insurer required to remit taxes by EFT who remits those taxes by means other than an approved EFT method shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

Insurers and surplus line brokers are required to participate in the EFT program if their annual taxes for the preceding year exceeded twenty thousand dollars (\$20,000). Failure to participate in the EFT program results in a penalty fee for insurers and surplus line brokers. Per CIC Sections 1775.8(c)(2), 12976.5(c)(2), or California Revenue and Taxation Code Section 12602(c)(2), insurers or surplus line brokers may be relieved of the penalty for failure to make payment by EFT. All insurers and surplus line brokers are also reminded that while Fedwire is an appropriate EFT method, electronic funds transfers may be made by Fedwire **only if prior approval is obtained from the California Department of Insurance (CDI)**.

**Non-Timely Payments**

Pursuant to CIC Sections 1775.4(e) and 1775.5(b), a penalty of 10 percent of the amount of the payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required.

Non-compliance with the timeliness requirements results in a penalty fee for insurers and surplus line brokers. Per CIC Sections 1775.4(e) and 1775.5(b), surplus line brokers may be relieved of the penalty for non-compliance with the timeliness requirement. (Insurers who are non-compliant with the timeliness requirement are required to send their waiver request to the Board of Equalization (BOE) pursuant to California Revenue and Taxation Code Section 12636. The BOE may be contacted at: John Eng, Board of Equalization, Excise Tax Division, 450 N Street, MIC-56, Sacramento, CA 95814.)

## **Waiver of Penalties**

Waivers may be granted due to reasonable cause or circumstances beyond the insurer or surplus line broker's control. To define and make clear situations that constitute reasonable cause, the CDI has promulgated regulations ([California Code of Regulations, Title 10, Section 2330](#)).

In general, not being aware of the EFT and/or timeliness requirements is not considered reasonable cause or a circumstance beyond the insurer or surplus line broker's control. In addition to the statutes, the EFT and timeliness requirements are stated in the filing instructions included with the tax forms, and these requirements are also incorporated into the CDI's Annual Tax Return Information Notice which is sent to all admitted insurers, surplus line brokers, and other interested parties. In most cases, waivers of penalties are not granted in situations involving staffing issues. Prudent business practices will ensure that back-up procedures are in place when unexpected personnel issues surface.

If you have any questions regarding this Notice, please contact Roger Bankston at (916) 492-3042.