

## **Minnesota Department of Revenue**

### **Revenue Notice # 20-01: Insurance Taxes – Nonadmitted Insurance Premium Tax – Broker Fees**

#### **Introduction**

All surplus lines brokers who broker nonadmitted insurance policies for insureds whose home state is Minnesota must report and pay the Nonadmitted Insurance Premium Tax. *Minnesota Statutes* section 297I.05, subdivision 7.

#### **Background**

The Nonadmitted Insurance Premium Tax is imposed on “gross premiums.” Gross premiums include: (1) any payment made as consideration for a nonadmitted insurance contract, including premium deposits, assessments, and fees; and (2) any other compensation paid in consideration for a nonadmitted insurance contract. *Minnesota Statutes* section 297I.01, subdivision 9(d).

On January 27, 2014, the Department issued a Bulletin to clarify how surplus lines brokers should calculate gross premiums when a policyholder pays the broker a fee under a policyholder-broker agreement (e.g., a policyholder-broker service agreement) instead of the broker receiving a commission from the insurance company.

The 2014 Bulletin states that when a broker is paid this kind of a fee, it is reasonable to include in gross premiums the commission the broker “would have collected” from the insurance company. The Bulletin then describes acceptable methods for approximating a commission.

This Revenue Notice, which replaces the 2014 Bulletin, adds additional clarity regarding what amount of a broker fee should be included in gross premiums pursuant to *Minnesota Statutes* section 297I.01, subdivision 9(d).

#### **Department Position**

A broker complies with Minnesota law if the broker uses one of the following three methods to determine what amount of a broker fee is included in gross premiums pursuant to *Minnesota Statutes* section 297I.01, subdivision 9(d):

1. Include the entire broker fee in taxable gross premiums.
2. Calculate the “average percentage commission” by averaging the percentage commission earned on all commission-paying, nonadmitted policies placed during the prior calendar year. Then multiply that average percentage commission by the premiums paid for the fee-only policies placed under the broker agreement(s) and include the amount in taxable gross premiums.

3. Take the industry average commission rate and multiply it by premiums paid for the fee-only policies placed under the broker agreement(s), and include the amount in taxable gross premiums.
  - a. The industry average commission rate is calculated by aggregating the last five calendar years of data that each surplus lines insurer submits to the National Association of Insurance Commissioner (“NAIC”) on its Minnesota “Exhibit of Premiums and Losses,” which is part of each insurer’s NAIC Annual Statement. Specifically, the rate is a product of all “Commissions and Brokerage Expenses” reported on such exhibits divided by all “Direct Premiums Written” reported on such exhibits.
  - b. The industry average commission rate for the 2019 tax year, calculated using the method described in 3(a) above, is 14.79%. This rate applies to the return periods ending June 30, 2019 and December 31, 2019.
  - c. The industry average commission rate will be updated annually on the Department’s website ([www.revenue.state.mn.us](http://www.revenue.state.mn.us)). An updated rate, which will be published on the website by May 1, will reflect the most recent five calendar years of surplus lines insurer NAIC annual statement data. The updated rate applies to the return periods ending June 30 and December 31 of the same year.

The Department understands that prior to delivering a policy, brokers are required to provide the Surplus Lines Association of Minnesota (“SLAM”) certain policy data, including taxable “gross premiums” as defined by *Minnesota Statutes* section 297I.01, subdivision 9(d). Please contact SLAM with questions about how the above-described methods interact with SLAM requirements.

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Lee Ho, Deputy Commissioner