



DECEMBER 2008

# TAX TOPICS

Texas Comptroller of  
Public Accounts

## INSURANCE TAX

### Surplus Lines Tax Exemptions/Preemptions

Surplus lines insurance policies written by licensed Texas surplus lines agents are exempt from taxation under the following circumstances.

#### Statutory Exemptions

Under Chapter 225.004 (e), Texas Insurance Code, policies that cover risks or exposures on premiums that are properly allocated to federal waters, international waters or are under the jurisdiction of a foreign government are tax-exempt.

International water is defined as being outside the Three Marine League Line, which is approximately 10.4 miles from shore. Texas has full sovereignty over the water, beds and shores, and arms of the Gulf of Mexico within its boundaries, including all land that is covered by the Gulf of Mexico and the arms of the Gulf of Mexico, either at low tide or high tide. Policies covering risks within 10.4 miles of the Texas coast and Texas inland waters are taxable.

Any U.S. possessions or territories as listed with the Office of Territorial and International Affairs of the U.S. Department of the Interior do not qualify as functioning under the jurisdiction of a foreign government; therefore, policies covering risks in these locations remain subject to taxation.

#### Federal Preemptions

The Financial Institution Reform, Recovery and Enforcement Act of 1989 provides a preemption from state taxation for the Federal Deposit Insurance Corporation (FDIC). The preemption is allowed under 12 U.S.C. §1825 (b). This preemption applies to receive-

erships only, not to supervision or conservator ships.

Federally chartered credit unions are preempted from state taxation under 12 U.S.C. §1768.

The National Credit Union Administration, when acting as conservator or liquidating agent for Federal Credit Unions, is exempt from taxation under 12 U.S.C. §1787(b).

The Federal Indian Reorganization Act of 1934 (Act) provides special protection from taxation on activities that occur on tribal lands. Section 1151, Title 18, US Code, states

that "Indian country" is limited to territory within the United States. Generally, the terms "Indian Tribes," "Indian Country," "Tribal Nations," and "Indian reservations" refer to the American Indian tribal lands within the borders of the United States.



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### SURPLUS LINES TAX EXEMPTIONS/PREEMPTIONS

The limitation on taxation provided by the Act is specific to activities that occur on the tribal lands. The State therefore recognizes a Federal preemption from surplus lines taxation for insurance that covers exposures within the borders of tribal lands, but not on insured exposures of the Tribal Nation located outside its borders.

For example, no tax is due for insurance on buildings, equipment or automobiles if they are located within or garaged within the tribal lands. If the buildings, equipment or automobiles are owned by the Tribal Nation but not located within or garaged within the tribal lands, surplus lines tax is due.

Surplus lines tax is due on property/building exposures that are leased by a Tribal Nation.

No tax is due for liability insurance exposures on activities that occur within the tribal lands. Liability coverage on activities by a Tribal Nation that occur outside of the tribal lands is subject to surplus lines tax.

Requests for refunds of monies paid in error because of these exemptions and preemptions should be directed in writing to the Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774-0100.

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