

June 2001

WEST VIRGINIA INFORMATIONAL LETTER

NO. 131

**TO: ALL EXCESS LINES BROKERS LICENSED TO DO BUSINESS IN THE
STATE OF WEST VIRGINIA**

RE: INSURANCE TAX PROCEDURES ACT (ITPA)

House Bill 3009 was passed by the legislature and signed into law on April 30, 2001. This bill provides uniform procedures for the administration of taxes that are paid or remitted to the Insurance Commissioner. The bill also provides for excess lines brokers and risk retention groups to collect and remit the fire and casualty insurance policy surcharge imposed by West Virginia Code Section 33-3-33. Additionally, the tax on risk retention groups is equalized to match the tax imposed on other insurers. Effective July 11, 2001, the bill amends West Virginia Code Sections 29-3-22, 33-2-15, 33-3-14, 33-3-14a, 33-3-14c, 33-3-14d, 33-32-5 and creates a new Article entitled the Insurance Tax Procedures Act (ITPA).

For excess lines brokers, an important change is to West Virginia Code Section 33-3-33(b), which imposes a new duty on excess lines brokers to collect and remit to the Commissioner a 1% policy surcharge payable on all fire and casualty policies placed by the broker. Under the new law, the 1% surcharge will be paid by the policyholder to the excess lines broker, who will remit it to the Commissioner on a quarterly basis. The policy surcharge is refundable on a pro rata basis to policyholders upon cancellation of the policy.

Excess lines brokers must begin collecting the 1% policyholder surcharge on all fire and casualty policies with an effective date on or after July 11, 2001. This includes all new and renewal premiums. Payments on policies that are written as deferred, financed or paid on an installment basis received by the excess lines broker on or after July 11, 2001, are to be considered renewal premiums. The 1% policyholder surcharge is to be collected on these premiums.

New surcharge forms are being developed for the excess lines brokers to remit the surcharge to this Office. The forms, along with new instructions and a revised format for the Annual Report of Written Excess Line Policies will be forwarded to excess lines brokers prior to the third quarter filing date.

This bill also makes the dates on which tax returns are to be completed and returned uniform. All quarterly tax returns are due on or before the 25th day of the month following the end of the quarter in which they accrue, except the fourth quarter, which is due on or before March 1st of the next year. For example:

Quarter	Ends	Tax Due
1	March 31	April 25
2	June 30	July 25
3	September 30	October 25
4	December 31	March 1

The ITPA provides for the addition of simple interest to any unpaid final assessment for a tax, fee, penalty or related charge at the rate established by the tax commissioner. West Virginia Code Section 11-10-17a requires the Tax Commissioner to establish interest rates, not less than eight percent, every six months based on the adjusted prime rate charged by banks. For the period beginning July 1, 2001, this rate has been set at 9%. Updates on the rate may be found on the Tax Department's Internet site at <http://www.state.wv.us/taxrev/taxdoc/an0118.htm>.

If a tax return is not complete, in proper form and postmarked by its due date, the insurer submitting the return will be assessed an automatic penalty of Twenty Five Dollars (\$25.00) per day for each day it is late. A return must be filed even if no tax or surcharge is due, and penalties for failure to timely file will be assessed even if no amount is due. In addition to the penalty for late filing, there is a penalty for late payment, which is automatically assessed at 1% of the unpaid amount for each day the payment is late, up to 100% of the amount due. For example:

Tax Due Date	Tax Return & Payment Postmark	Example Tax Due:	Penalty for Late Filing - 5 days	Penalty for Late Payment - 5 days	Interest - 5 days
April 25	April 30	\$100	\$125	\$5	12¢

These late penalties are automatic unless the broker obtains a waiver in writing from the Commissioner. Waivers will only be granted in extraordinary circumstances. If a broker knows a return and payment will be filed late, he or she may calculate the penalty and send it as a separate payment, payable to the Insurance Commissioner of West Virginia, with the return. However, if a broker feels the assessment is improper, the new ITPA contains a procedure for disputing assessments and penalties. Although assessments are presumed to be correct, within sixty (60) days of the assessment a taxpayer may request a hearing on the amount or validity of any assessment.

The new Article also defines the procedures for receiving a refund or credit for any tax or related charge administered by the Commissioner. Within five (5) years after the date a return is filed, or within four (4) years after the date a payment is made, a taxpayer may request a refund or credit for overpayment. If the amount of the credit or refund is over One Thousand Dollars (\$1,000.00), the Commissioner may pay the amount in equal installments over a three-year period, or may issue a credit against future taxes. Credits for overpayment may only be applied to future liabilities for like taxes. For example, an overpayment of the 2% premium tax imposed by West Virginia Code Section 33-3-14 may not be applied to pay the 0.5% fire insurance premium tax imposed by West Virginia Code Section 29-3-22. The taxpayer must request in writing that the credit be applied to a tax liability, stating the amount to be applied.

In addition to the changes in the Code, the ITPA authorizes new forms for tax filings. Revised forms will be mailed prior to the third quarter due date of October 25, 2001. In the meantime, or if no new form is forwarded, taxpayers may continue to use the existing forms.

This letter is intended to summarize and explain generally the effect of the changes and the new ITPA, but it is not intended to provide the complete details. Each insurer or broker responsible for filing a tax return with the Insurance Commissioner should review the new changes to the Insurance Code. Enrolled House Bill 3009 may be found on the Legislature's web page at: <http://legis.state.wv.us>

If you have any questions regarding the contents of this Informational Letter, you may contact the Tax Audit Section of Financial Conditions Division at (304) 558-2100.

Jane L. Cline
Insurance Commissioner