June 2001

WEST VIRGINIA INFORMATIONAL LETTER

NO. 133

TO: ALL INSURANCE COMPANIES 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). This Informational Letter is intended to explain the changes in the procedure insurers must follow to report and pay taxes due to the Commissioner, and to explain the new procedures for handling disputes, refunds and credits for overpayment of taxes.

The bill makes uniform the language used throughout the Insurance Code, most notably by defining "taxable premium" as "the amount of gross direct premiums, annuity considerations or dividends on participating policies applied in reduction of premiums less premiums returned to policyholders due to cancellation of policies." Rather than repeating the definition each time it is referred to, the new term "taxable premium" is used. For insurers other than risk retention groups, there is no change in the tax rates imposed.

However, there is a change in the basis for calculating the 1% policyholder surcharge on fire and casualty policies imposed by West Virginia Code Section 33-3-33; that section has been amended to use the new "taxable premium" definition rather than the previously-used gross direct premium basis. Additionally, the amendment to Section 33-3-33 allows the policyholder surcharge to be refunded upon cancellation of policies. Previously the policyholder surcharge could not be refunded once the amounts collected had been remitted to the Commissioner.

The dates on which tax returns are to be completed and returned to the Commissioner are also made 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 (6) months based on the adjusted prime rate charged by banks. For the period beginning July 1, 2001, this rate has been set at nine percent. 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 is due, and penalties for failure to timely file will be assessed even if no tax 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 tax for each day the payment is late, up to 100% of the tax 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 insurer obtains a waiver in writing from the Commissioner, and waivers will only be granted in extraordinary circumstances. If an insurer knows the return and payment will be filed late, it may calculate the penalty itself and send it as a separate payment, payable to the Insurance Commissioner of West Virginia, with its return. However, if the insurer feels the assessment is improper, the new ITPA contains a procedure for disputing assessments like the late filing and payment penalties. Although assessments are presumed to be correct, within sixty (60) days of the assessment the insurer 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, the insurer 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, in her discretion, 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. An insurer must request that the credit be applied to a tax liability in writing stating the amount to be applied.

Additionally, 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, insurers may continue to use the existing forms.

This letter is intended to summarize and explain 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 changes to the Insurance Code. House Bill 3009 may be found on the Legistures'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