Assembly Bill No. 1088

CHAPTER 654

An act to amend Section 1775.5 of the Insurance Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 2008. Filed with Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1088, Carter. Surplus line brokers: taxation.

Existing law provides that every surplus line broker shall annually pay to the commissioner a tax of 3% of the gross premiums less return premiums upon business done by him or her during the preceding calendar year, excluding premiums for specified business.

This bill would also exempt the risk portion of any blended finite risk product used in the financing element of state or federal Superfund environmental settlements, as specified, from the 3% gross premium tax on surplus line brokers.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 1775.5 of the Insurance Code is amended to read:

1775.5. (a) Every surplus line broker shall annually, on or before the first day of March of each year pay to the Insurance Commissioner for the use of the State of California a tax of 3 percent of the gross premiums less return premiums upon business done by him or her under authority of his or her license during the preceding calendar year, excluding any portions of premiums upon business done involving the risk finance portion of any blended finite risk product used in the financing element of state or federal Superfund environmental settlements involving remediation of soil or groundwater contamination or by the provisions of Section 1760.5. If during any calendar year 3 percent of such return premiums upon business done by a surplus line broker exceed 3 percent of the gross premiums upon such business done by him or her in that year, then he or she may either carry forward such excess to the next succeeding year and apply it as a credit against 3 percent of gross premiums on such business done by him or her in such succeeding year, or he or she may elect to receive, and thereupon be paid a refund equal to the amount of taxes theretofore paid by him or her on such excess of return premiums paid over gross premiums received.

(b) For the purpose of determining such tax, the total premium charged for all such nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in such proportion as the total premium on the insured properties or operations in this state, as computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where such insurance applies, bears to the total premium so computed in all states or countries in which such nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other states. With respect to such operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less the following:

(1) Such portion of the premium as is determined, as herein provided, to have been charged for operations in other states taxing such premium on operations in such states of an insured maintaining its headquarters office in this state.

(2) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

(c) A penalty of 10 percent of the amount of the payment due pursuant to this section shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction thereof, from March 1, the due date of the annual tax, until the date the payment is received by the commissioner. The penalty and interest shall be applied as prescribed in Section 12636.5 of the Revenue and Taxation Code. The commissioner, upon a showing of good cause, may extend for a period not to exceed 30 days, the time for filing a tax return or paying any amount required to be paid with the return. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within, or prior to, the period for which the extension may be granted.

Any surplus line broker to whom an extension is granted shall, in addition to the tax, pay interest at the rate of 1 percent per month or fraction thereof from March 1, until the date of payment. The commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

(d) For any part of a payment required by this section or by Section 1775.4 which was not made within the time required by law, when such nonpayment or late payment was due to fraud on the part of the broker, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.

(e) For the purposes of this section these terms shall have the following meanings:

(1) “Blended finite risk product” means a contractual arrangement combining risk finance with traditional risk transfer, where a distinct portion of the program cost represents the funding of a known, existing, nonfortuitous future cost, obligation, responsibility, or liability at its discounted net present value, and another portion of the program cost

represents risk transfer for losses which have yet to occur related to the cost, obligation, responsibility, or liability that is the subject of the program.

(2) “Risk financing” means that portion of any blended finite risk product which represents the funding of a known, existing, nonfortuitous future cost, obligation, responsibility, or liability.

(3) “Risk finance” or “financing element” means a method of funding for a known future cost over a long time horizon in current-value dollars using the principle of net present value discounting.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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