

Surplus Lines

Report Filings/Tax Rates

1. When are surplus lines tax reports due?

Effective January 1, 2017, filing and payment dates pursuant to Neb. Rev. Stat. § 44-5506(3) have changed. The new dates will be effective for the fourth quarter 2016 report and going forward. The new dates are as follows:

- 1st Quarter report and payment for the period January 1 through March 31 is due June 1.
- 2nd Quarter report and payment for the period April 1 through June 30 is September 1.
- 3rd Quarter report and payment for the period July 1 through September 30 is due December 1.
- 4th Quarter report and payment for the period October 1 through December 31 is due March 1.

2. Where does a filer obtain the forms necessary to report surplus lines activities?

The Nebraska Department of Insurance (NDOI) encourages electronic filing via OPTins. Instructions for electronic filing can be found at www.optins.org. Surplus lines forms can be found on the NDOI website at <https://doi.nebraska.gov/producers/surplus-lines-information>.

3. Does the surplus lines filing need to include fees as being part of the premium amount used to calculate the surplus lines taxes owed?

Yes. Premium is defined, for purposes of determining surplus lines taxes due, by Neb. Rev. Stat. § 77-907 which states, "Premiums shall mean the consideration paid to insurance companies for insurance and shall include policy fees, assessments, dues, or other similar payments, except that premium on all annuity contracts and pension, profit-sharing, individually sponsored retirement plans, and other pension plan contracts which are described in section 818(a) of the Internal Revenue Code shall be exempt from taxation."

As stated in the statute, fees, assessments, dues, or other similar payments paid to the insurance company are included in the calculation. Fees retained by the broker or a third party are not included in the calculation.

4. Does an agent need to file a report if they did not write any business?

Yes. Beginning with the 1st Quarter 2013 filing, every surplus lines licensee shall be required to make a filing, irrespective of activity written. If there were no policies written for the quarter, please fill out all licensee information, indicate No Activity, and enter zeros in the premium and tax fields.

5. Does Nebraska accept surplus lines filings under a choice of reporting methods coming from either the agency or the individual license?

The NDOI requires any person or entity that holds a surplus lines license to file a quarterly surplus lines report. It is acceptable if one chooses to report all business under the agency license and accordingly reports no business under the individual license. However, both the individual and the agency are required to file reports.

6. Does Nebraska accept multiple filings made for the same time period from each of the office locations of the surplus lines licensee?

No. Only one report is to be filed per licensee. If a consolidated report is filed, such report is to include all business conducted under that one license.

7. Does Nebraska accept electronic filings?

Yes. The NDOI encourages electronic filings via OPTins. Instructions for electronic filing can be found at www.optins.org.

8. When a company experiences a name change or merges with another entity with a new FEIN and a new surplus lines license number, and then begins to file under the new company FEIN and license, how are endorsements to be filed on those policies that were originally placed by the previous surplus lines licensee?

The new surplus lines licensee should report any activity placed by the new licensee in its quarterly filing. The old surplus lines licensee must report its activities in a filed quarterly report with the NDOI covering the time period up to when the surplus lines licensee concludes operations or terminates its license. The new company would begin reporting activity under the new license after a surplus lines license has been issued to the new entity.

9. Where can the NAIC number for an insurance carrier be found in order to complete information requested on the surplus lines reporting form?

Go to the NAIC website at <https://eapps.naic.org/cis/>. Input the company name and then click on "Find a Company". It is strongly suggested you contact the NAIC at (816) 783-8300 to obtain a publication referred to as the "Listing of Companies", which can provide you with the NAIC number for each carrier.

10. Does Nebraska allow courtesy filings?

No. Nebraska does not permit courtesy filings. Nonresident producers can obtain a Nebraska surplus lines license. As a way to accommodate situations where the only option is surplus lines, we permit licensed Nebraska producers to either make a referral or broker business to a licensed surplus lines producer. Commission issues are to be worked out between the two licensed parties. The key is that the referring producer must hold a Nebraska resident or nonresident producer license. For policies that insure a risk with multiple state exposures, the referring producer must be licensed, either as a resident or nonresident, in the home state of the insured.

11. What is the appropriate surplus lines tax rate to be applied to endorsements on policies providing multi-year coverages?

The appropriate tax rate to use is generally the rate that is effective on the policy anniversary date. However, for endorsements, the tax rate to be applied would be the rate in effect when the endorsement coverage became effective.

12. Can a filer seek a refund of surplus lines taxes previously paid?

Yes, pursuant to Neb. Rev. Stat. § 77-910 (2), a request for refund for a refund due to a mistake of fact, an error in calculation, or erroneous interpretation of statute, shall be requested within one year from the date the overpayment was made or shall be denied.

It is also important to note that NDOI will require verification of the tax amount and tax rate originally paid, and thus any refund should only be sought by the surplus lines licensee who originally paid the tax. In rare occasions, when a refund is sought by someone other than the original payor, the refund being requested must identify the original payor, surplus lines licensee, and provide a clear explanation as to why the refund is being sought by someone other than the original payor. Any refund sought should be based on the tax rate and amount that was originally paid to Nebraska.

No refund checks will be issued for less than \$25. If a quarterly filing results in a new refund due of less than \$25, the credit should be carried forward to the next quarter's filing.

Surplus Lines Carriers

13. Does Nebraska maintain a list of approved surplus lines carriers?

No. Nebraska does not maintain a list of approved surplus lines carriers, but relies on the NAIC listing. The listing can be found on the NAIC website at <https://eapps.naic.org/cis/>. Input the company name and then click on "Find a Company". Select and click on "Licensing" under the additional information. This will indicate in which states the company is licensed. If the company has an "L" next to Nebraska, this company is an admitted carrier in Nebraska and cannot be used to place surplus lines policies. If the company has an "E" next to Nebraska, the company is non-admitted and eligible for surplus lines.

Producers who place business on a surplus lines basis with a non-United States insurance carrier must ensure that the carrier is listed on the "Quarterly Listing of Alien Insurers" maintained by the NAIC, as per Neb. Rev. Stat. § 44-5508(2). This publication is available for free download from the NAIC website located at http://www.naic.org/cmte_c_surplus_lines_wg.htm?tab_3. Click on "Quarterly Listing of Alien Insurers" and it will bring up the four most current quarters available. You may also contact the NAIC at (816) 783-8300 to obtain a copy of the publication, "Quarterly Listing of Alien Insurers".

Licensing

14. If an agent works for an agency that holds a surplus lines license, does the agent also need to hold a surplus lines license?

If all the individual agent's business is placed through a licensed surplus lines agency, and all business is being reported for surplus lines tax purposes through the agency, then in such cases

the individual agent does not need to hold a surplus lines license. However, the individual agent must be listed on the corporate surplus lines license in order to transact surplus lines business on behalf of the agency and also hold a current producer license.

Neb. Rev. Stat. § 44-5503 states, "The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirement for an individual surplus lines license and who have authority to transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number..."

15. What are the licensee's requirements for placing coverage with a nonadmitted insurer?

A producer should be familiar with Neb. Rev. Stat. § 44-5508 which states, (1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer: (a) Is authorized to write such insurance in its domiciliary jurisdiction; and (b) has established satisfactory evidence of a good repute and financial integrity; and (c) (i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or (ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(1) of this section, then upon an affirmative finding of acceptability by the director.."

Neb. Rev. Stat. § 44-5508 further states, "(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners..."

In addition, the licensee should be familiar with records requirement as identified in Neb.Rev.Stat. § 44-5505 which states, "Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy from issued by the licensee, (8) a copy of the written statement described in subdivision (1)(c) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name of the insured, (10) the address of the principal residence of the insured or the address at which the insured maintains its principal place of business, (11) a brief and general description of the risk or exposure insured and where located, (12) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (13) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers."

Additional questions should be directed to NDOI staff at DOI.surpluslines@nebraska.gov or via phone at 402-471-4646.