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SUBCHAPTER 34. SURPLUS LINES INSURANCE:  
ALLOCATION OF PREMIUM TAX AND  
SURCHARGE

**11:2-34.1 Purpose and scope**

(a) This subchapter sets forth the method by which the surplus lines premium receipts tax imposed pursuant to N.J.S.A. 17:22-6.59 and 6.64 and the New Jersey Surplus Lines Insurance Guaranty Fund assessment imposed pursuant to N.J.S.A. 17:22-6.75 is computed on the portion of the premium which is properly allocable to the risks or exposures located within this State.

(b) This subchapter applies to all surplus lines agents and insureds required to forward premium receipts tax to the Commissioner pursuant to N.J.S.A. 17:22-6.59 and 6.64, and

assessments to the New Jersey Surplus Lines Insurance Guaranty Fund pursuant to N.J.S.A. 17:22-6.75a(2).

**11:2-34.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Allocation Schedule” means the schedule in the Appendix to this subchapter incorporated by reference which sets forth the criteria for tax allocation to New Jersey of a portion of the premium of multi-state risks.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Guaranty fund” means the New Jersey Surplus Lines Insurance Guaranty Fund created by N.J.S.A. 17:22-6.73.

“Located in New Jersey” or “in New Jersey” means a physical presence in or headquartered in the State of New Jersey.

“Surplus lines agent” means an individual licensed pursuant to N.J.S.A. 17:22A-26 et seq. and N.J.A.C. 11:17-2.2 to place insurance coverages with unauthorized insurers.

“Surplus lines insurer” means an unauthorized insurer which is eligible for placement of insurance coverage pursuant to N.J.S.A. 17:22-6.42, 6.43 and 6.45.

“Unauthorized insurer” means an insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to N.J.S.A. 17:17-1 et seq. for domestic insurance companies and N.J.S.A. 17:32-1 et seq. for foreign companies, and any other laws of this State.

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Amended by R.2006 d.373, effective October 16, 2006.

See: 38 N.J.R. 2785(a), 38 N.J.R. 4488(a).

In definition “Surplus lines agent”, updated N.J.S.A. reference.

### 11:2-34.3 Allocation of premium tax and surcharge

(a) Each surplus lines agent shall within 45 calendar days after the end of each calendar quarter file with the Commissioner a verified report in duplicate of all surplus lines insurance transacted, or not transacted, during such calendar quarter as set forth in N.J.S.A. 17:22-6.58. The surplus lines agent shall collect from the insured and forward to the Commissioner the appropriate amount of tax collected for each quarterly period as set forth in N.J.S.A. 17:22-6.59 which shall be allocated as set forth in this subchapter when a surplus lines policy covers risks or exposures only partially located within this State.

(b) Premiums charged by eligible surplus lines insurers in this State may be subject to a surcharge of up to four percent calculated in accordance with N.J.S.A. 17:22-6.75a(2). If a surcharge is imposed, the surplus lines agent shall collect from the insured and forward to the Fund the amount of the surcharge on a quarterly payment basis.

(c) The surplus lines agent or insured shall determine the premium and surcharge properly allocable to risks or exposures located in this State by using the method of allocation according to the Allocation Schedule set forth in the Appendix to this subchapter, which is hereby incorporated by reference, which pertains to the classification describing the coverage.

(d) If the Allocation Schedule does not identify a classification appropriate to the property or risk located in this State, the surplus lines agent or insured shall use an alternative equitable method of allocation for the property or risk.

(e) If a policy covers more than one classification:

1. For any portion of the coverage identified by a classification on the Allocation Schedule, the tax shall be computed using the Allocation Schedule for the corresponding portion of the premiums.

2. For any portion of the coverage not identified by a classification on the Allocation Schedule, the tax shall be computed as set forth in (d) above.

3. For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation that pertains to the classification on the Allocation Schedule describing the predominant coverage.

(f) If, in the opinion of the Commissioner, the information provided by the surplus lines agent or insured is insufficient to support its method of allocation, or if the Commissioner determines that the method used is incorrect, the Commissioner shall determine an equitable and appropriate method of allocation as follows:

1. If the Allocation Schedule identifies a classification appropriate to the coverage, the Commissioner shall use the method of allocation as set forth in (c) above.

2. If the Allocation Schedule does not identify the classification appropriate to the coverage, the Commissioner, in determining an alternate method of allocation, shall give significant weight to documented evidence of the underwriting exposure basis and any other criteria used by the insurer to determine the policy premium. The Commissioner may also consider other available information to the extent he or she finds the information sufficient and relevant, including, but not limited to, the following:

- i. The percentage of the insured’s physical assets in this State;
- ii. The percentage of the insured’s employee payroll in this State;
- iii. The percentage of the insured’s sales in this State; and
- iv. The amount of premium tax paid to another jurisdiction.

(g) The listing of any coverage of insurance in the Allocation Schedule shall not mean that such coverage has been deemed by the Commissioner as eligible for export. No coverage shall be eligible for export unless the conditions set forth in N.J.S.A. 17:22-6.43 are satisfied.

Amended by R.2006 d.373, effective October 16, 2006.

See: 38 N.J.R. 2785(a), 38 N.J.R. 4488(a).

In (a), substituted “within 45 calendar days after” for “on or before”; and in (b), substituted “may be” for “are” and “If a surcharge is imposed, the” for “The” and updated the N.J.S.A. reference.

### 11:2-34.4 Duty to file allocation form

(a) The surplus lines agent shall file a copy of the work sheets which show the method of allocation when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.57 and 6.58 and all renewals, until such time as a different method is approved and filed.

(b) The insured or self-insured shall file a copy of the allocation form when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.64 and 6.65, and all renewals, until such time the alternative method is approved and filed.

#### 11:2-34.5 Duty to keep records

(a) The surplus lines agent shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.57 and 6.58, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(b) The insured or self insured shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.64 and 6.65, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(c) These records shall be available for review by the Department at all times and copies shall be provided to the Surplus Lines Examining Office of the Department, upon request, at any time during the period of retention.

#### 11:2-34.6 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law including, but not limited to, N.J.S.A. 17:22-6.61, 6.64 and 6.76.

### APPENDIX

#### SURPLUS LINES PREMIUM TAX AND ALLOCATION SCHEDULE

##### Criteria for Tax Allocation of Multi-State Risks

Classification	Allocated to New Jersey by
<b>PROPERTY INSURANCE</b>	
Real Property (including buildings and other permanent additions)	Insured value of structures and other property in New Jersey
Personal Property (including inland marine)	Insured value of property permanently or principally situated in New Jersey
Business Interruption, Time Element or similar time valued coverages	Insured time valued elements in New Jersey
Farmowners, Homeowners and Businessowners (BOP)	Insured value of structures and other property in New Jersey
Aircraft	Insured value of aircraft principally garaged in New Jersey
Motor Vehicle	Insured value of motor vehicles principally garaged in New Jersey
Kidnap and Ransom	Number of insured employees principally employed in New Jersey
Ocean Marine	None to New Jersey
<b>FIDELITY AND SURETY</b>	
Fidelity, Forgery and other Indemnity Bonds	Number of insured employees in New Jersey
Bankers Blanket Bonds	Number of insured employees in New Jersey
Performance Bonds	Total bond value of contracts in New Jersey

<b>Classification</b>	<b>Allocated to New Jersey by</b>
Other Surety Bonds	Total bond value of contracts in New Jersey
<b>CREDIT INSURANCE</b>	
Credit Insurance	Value of insured debt in New Jersey
<b>RESIDUAL VALUE INSURANCE</b>	
Residual Value Insurance	Allocate to value of underlying property
<b>LIABILITY INSURANCE</b>	
Manufacturers and Contractors	Payroll in New Jersey
Premises Operations	Square footage of premises in New Jersey
Owners and Contractors Protective	Cost of contract in New Jersey
Products	Number of units manufactured in New Jersey
Completed Operations	Receipts in New Jersey
Child Care	Number of children in New Jersey
Contractual	If "stand alone" policy, value of sales in New Jersey
Recreational	Amount of gate receipts in New Jersey
Environmental Impairment	Number of units of exposure in New Jersey
Asbestos Abatement	Payroll in New Jersey
Employee/Member Benefit Program	Number of employees/members in New Jersey
Special Events	Number of events in New Jersey
Professional Liability	Number of named insureds in New Jersey
Errors and Omissions	Revenues generated in New Jersey
Directors and Officers:	
For-profit organization	Revenues generated in New Jersey
Non-for-profit organization	Number of employees Headquartered in New Jersey
Hospital, Nursing Home and Adult Home	Number of beds in New Jersey plus one additional bed for each 100 outpatient visits at locations in New Jersey
Liquor Liability	Receipts from sales of alcoholic beverages in New Jersey
Railroad Protective	Miles of track in New Jersey
Aircraft	Number of aircraft principally hangared in New Jersey
Motor Vehicle	Number of motor vehicles principally garaged in New Jersey
Umbrella	Classification of predominant coverage: except if underlying coverages are divisible, then use underlying classifications
Excess Liability	If directly over primary, use underlying classifications. If over umbrella, use method for "umbrella" coverage
Comprehensive General Liability	Composite Rated Exposure based allocated to New Jersey

### SUBCHAPTER 35. RELIEF FROM INSURER OBLIGATIONS UNDER THE FAIR AUTOMOBILE INSURANCE REFORM ACT OF 1990

#### 11:2-35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer requests for exemption, abatement, deferral, suspension of or excuse from an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.