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May 29, 2015 *(Submitted by e-mail, May 29, 2015)*

Michael Kakuk, Counsel
Office of the Commissioner of Securities & Insurance,
Montana State Auditor
840 Helena Ave.
Helena, Montana 59601

RE: **Proposed Regulations: Fire Premium Tax allocations**

Dear Mr. Kakuk,

Thank you for the opportunity to provide formal comment with regard to the Montana CSI's proposed fire premium tax allocation regulatory amendments.

The Property Casualty Insurers Association of America (PCI) and the National Association of Mutual Insurance Companies (NAMIC) are the nation's leading property-casualty insurance trade associations, with members comprising a large majority of the personal and commercial fire insurance policies in force in Montana and the United States today.

On behalf of our associations and our members, we suggest that the department's well-intended effort to improve efficiency may have unintended consequences that shift significant costs and administrative burdens of MCA 33-2-705 from the insurance department – where we argue the statute contemplates – to insurers (or, in the particular case of surplus lines, brokers and insureds). Our major concerns are as follows:

1. **Non-admitted carriers (surplus lines writers) should not be included.** As you are aware from discussions with the industry prior to and during the May 21 public hearing, non-admitted carriers are not subject to the statute requiring insurers to directly collect or pay the fire premium tax. Under 33-2-311 MCA, fire premium taxes are calculated, collected and submitted by surplus lines brokers and paid by insureds. Therefore, the reference to "surplus lines" in proposed New Rule III is inaccurate in our view.

   Additionally, it is important to note that while the fire premium tax calculated and paid by **admitted** carriers is based on premium written in Montana, the tax calculated and collected by surplus lines brokers is based on premium written on policies where Montana is the home state of the insured for all of the insured's risk exposures wherever the exposures exist, potentially

across multiple states. The tax collected is then submitted to the state of Montana. This creates an “apples/oranges” analysis of tax calculations.

Also, we would be interested in the CSI analysis of the proposed fire premium tax allocation of 60% for surplus lines, when an analysis of data from the National Association of Insurance Commissioners suggests that roughly two-thirds of the premium written by surplus lines insurers is on **liability** lines of coverage.

Based on these factors, we believe any references to surplus lines/non-admitted carriers, writers or companies should be omitted from the proposed regulations.

2. **Shifting the burden of proof means potentially higher premium tax obligations for some insurers and unnecessary administrative/cost burden for others.** A new, CSI-established fire premium tax allocation schedule is proposed in New Rule III. In New Rule II, insurers subject to paying premium tax are required to allocate and pay taxes as established in the new schedule (or greater), or, in the alternative, to develop independent methodologies and submit tax allocations with the supporting methodologies for review by the department. In essence, the department is establishing by rule what is “reasonable” for insurers to allocate – even if that results in a substantial and inappropriate premium tax for an insurer.

   The CSI’s proposed creation of a “presumptively reasonable allocation” legal standard would shift the burden of rebutting the CSI’s presumptive tax allocation - which could be methodologically flawed or actuarially inaccurate - onto insurers. Since the proposed regulation does not specify how the “presumptively reasonable allocation” has been or will be calculated, nor what actuarial principles and assumptions will be used by the CSI to establish the “presumptively reasonable allocation”, insurers will have no basis on which to judge the actuarial or public policy soundness of the department’s allocation.

   Moreover, there is no statement or process detailing how, an insurer may challenge the accuracy of the CSI’s “presumptively reasonable allocation” determination. In effect, the proposed regulation will require insurers to “blindly accept” the department’s allocation formula, or engage in a potentially protracted and contentious premium tax allocation dispute with the CSI.

   For example, the proposed regulation contemplates that the CSI will establish a “presumptively reasonable allocation” attributable to the various lines of business. This could create a problem for insurers whose allocation percentages are legitimately different based upon the insurer’s actual experience in the Montana marketplace for a particular insurance product line. The proposed regulation would require an insurer to “defend” its tax allocation for each and every one of its various lines of insurance, e.g. Farm owners Multi-Peril, Homeowner's Multi-Peril, CMP Liability, Inland Marine, & Private Passenger Auto.

   This approach would appear to be in conflict with the department’s stated objective of reducing administrative cost for insurers and the CSI.

Our associations and members are also concerned that an insurer's only alternative to the established allocation is to develop its own methodology – a costly and time-consuming administrative burden that may ultimately be rejected by the department. We believe this proposed alternative premium tax allocation approach will ultimately result in a "de facto" tax increase for insurers who choose to either accept the state's allocation formula rather than endure the time and expense (and risk) of developing their own formula, or who want to avoid an administrative law or legal challenge of the CSI's rejection of the insurer's premium tax allocation. The proposed regulation carries with it the potential for unnecessary regulatory conflict, which would be detrimental to insurers and their policyholders, as well as to the insurance regulator.

3. **Proposed rules may exceed CSI statutory authority.** As you know, 33-2-705 MCA states: "the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report". In proposed New Rule II, the department would establish the allocation, pre-determining that the allocation would then be reasonable *per se*. From our viewpoint, this would appear to exceed the department's statutory authority.

4. **Alternative approaches considered?** Insurers share the Commissioner's stated concern that the time and cost of reviewing the accuracy of currently-filed fire premium tax allocations is placing a challenging burden on the department. However, our associations and our members are concerned that the proposed solution would in some cases serve to make the situation worse.

   Has the department considered issuing guidance to insurers for determining allocation? Or, in the alternative, has the department reviewed whether the majority of insurers are already meeting the standards the department hopes to impose – and whether it might be equally (or more) efficient to audit those companies who appear to be under-allocating fire premium taxes? We believe such a review could be more effective and hold less potential for market disruption than the proposed rules appear to pose to our members and our industry.

Thank you for your consideration of these concerns. Please contact either of us if we can provide additional information.

Respectfully submitted,

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