Audit Procedures for Insurance Tax

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CHAPTER 1
INTRODUCTION

The History of Insurance Taxation in Texas

The state of Texas has assessed a tax on insurance companies for over 160 years. The first tax levied on insurance companies in Texas was an annual fee of $50 in 1862. The current basis for taxation as a percentage of gross premium receipts was adopted in 1893.

In the past, insurance taxation allowed some companies to qualify for a lower tax rate if the company met certain Texas investment requirements. In 1907, the enactment of the Robertson Law required all companies to maintain 75% of their legal reserves in Texas investments for Texas business. Companies achieving this requirement qualified for a lower tax rate.

In Texas, the tax statutes on rates and investment criteria for life and accident and health (A&H) companies were revised in 1984 so that both foreign and domestic insurers had the same rate schedule. Over the years the variances in the tiered rates diminished. Beginning in 1995, a flat tax rate was imposed on life and A&H companies. These companies no longer have an option to meet Texas investment provisions and qualify for a lower tax rate. A tiered rate system was in use by property and casualty (P&C) insurers and title insurance companies through the 1999 reporting period. Beginning in 2000, P&C insurers and title insurance companies also have a flat tax rate. There are currently no insurance tax rates based on investment criteria.

After a Sunset Commission review, House Bill (HB) 1461 was passed by the 73rd Legislature in 1993. That bill transferred the collection, reporting and administration of taxes and certain fees and assessments from the Texas Department of Insurance (TDI) to the Comptroller of Public Accounts (Comptroller) effective September 1, 1993.

The changes include a requirement for semi-annual prepayments and annual reporting for all types of insurance companies. The returns were consolidated into one report for all company types. Reported information and available guaranty fund credits are maintained on the CICS database.

The penalty and interest provisions under prior Articles 4.13 and 4.14 of the Texas Insurance Code (TIC) were repealed and are now contained under Subtitles A and B, Title 2, Tax Code and apply to all taxes, fees and assessments due. Additionally, tax disputes or disagreements with the Comptroller fall under Title 34, Texas Administrative Code Section 1.1 – 1.42, the Rules of Practice and Procedures. Insurance tax audits and assessments are subject to the same administrative procedures as all other state taxes administered by the Comptroller.

TDI is responsible for licensing of companies and agents, and through its Financial Analysis Division, performs examinations of insurance companies domiciled in Texas for regulatory and financial solvency purposes.

Additional Insurance Taxes and Fees

In addition to taxes based on gross premiums, insurance companies pay maintenance taxes and fees to support the operation of TDI; the Workers' Compensation Commission; and until September 1, 2003, the Research and Oversight Council on Workers' Compensation. Effective September 1, 2003, the Research and Oversight Council on Workers' Compensation functions were moved to TDI. Then effective September 1, 2005, the Texas Workers' Compensation Commission was abolished and replaced by the Division of Workers' Compensation and the Office of Injured Employee Counsel, within TDI. These divisions are funded by maintenance taxes. Retaliatory taxes, designed to ensure that Texas domestic insurers achieve tax parity in other states, may be due from foreign insurers. Additionally, an assessment went into effect on September 1, 1993, to fund the Office of Public Insurance Counsel (OPIC).

Insurance Code, Chapter 2007, Assessment for Rural Fire Protection, imposes the Volunteer Fire Department Assistance Fund (VFDAF) Assessment on some insurers to help fund the Rural Volunteer Fire Department Assistance Program. The total amount of this assessment is set by statute. The Comptroller calculates each insurer's portion of the total amount due each year and sends a billing directly to the insurers.

Transportation Code, Section 1006.153, Fee Imposed on Insurer, imposes a fee to support the Motor Vehicle Crime Prevention Authority (MVCPA). The MVCPA has the responsibility to administer this fee but has an interagency agreement with the Comptroller. Under this interagency agreement, the Comptroller assists the MVCPA with publishing forms and collection activities. While the MVCPA has the responsibility to verify refund claims and audit this fee, at times they request assistance from the Comptroller.

Maintenance tax rates are set annually by TDI based on expected funding needs and a projected premium tax base. The rates are adopted during the fall of each year for use by the Comptroller for the March reports.

Additionally, some insurance companies may perform or have related companies that may perform activities meeting the definition of taxable insurance services that are subject to Texas sales tax. Please refer to Rule 3.355 of Subchapter O of the Texas Administrative Code for additional information.

General Audit Procedures

The procedures applicable to audits of insurance companies are much the same as those for any tax audit performed by the Comptroller. **Note**: Specific procedures for the various types of companies are found in later chapters.

As with other audits a "Record of Audit Planning, Activities and Audit Results" or audit plan is prepared for the assignment. This document covers both the premium tax (Tax Type 71) and the maintenance tax (Tax Type 72) if applicable. The audit plan is used to document planned procedures, actual procedures performed and the results of these activities for each area examined in the audit. The listing of events section is used to document important dates, communication with the taxpayer and other pertinent phone calls or correspondence. The audit plan should be updated on a daily basis. Refer to the chapter on Audit Write-Up in this manual for more detail.

Audit periods generally cover a four-year period unless an exception to the statute of limitation applies. The limitation and exception provisions are found in Title 2, Chapter 111 of the Tax Code. The most common exceptions for insurance audits occur when no returns have been filed or when the reported tax contains a gross error. Gross error means that, after correction of the error, the amount of tax due and payable exceeds the amount initially reported by at least 25%. In either instance, the statute of limitation does not apply, and the audit period could cover any period of time. Generally, audit periods are extended to cover a total of seven years and approval from Audit Headquarters is required when such an exception exists.

In addition to pre-audit research, the entrance conference is one of the most important tools in gathering information to plan for and conduct an audit. The entrance conference should include a discussion of the following:

- The taxpayer(s) to be audited, the audit period and which taxes are being audited,
- The taxpayer's interpretation of laws and rules
- The taxpayer's business operations, accounting systems and reporting procedures,
- The taxpayer’s related entities business operations to determine potential sales tax exposure from taxable insurance services,
- Historical data, as obtained from the various system inquiries,
- How the taxpayer handles potential problem areas, such as allocation of umbrella policies, group policies and retaliatory tax, and
- The extent of data readily available. Refer to the written records request if one was provided and use it as a checklist. If no written list was previously sent, discuss the records required to perform the audit.

CHAPTER 2
PRE-AUDIT RESEARCH

Introduction
The auditor becomes familiar with the taxpayer's account in this phase of the audit process. The auditor should review certain information about the account and the business type to be audited before the taxpayer is contacted. Additional research can be accomplished through taxpayer contact and preliminary testing.

The National Association of Insurance Commissioners (NAIC) is a standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states. More information can be found at https://content.naic.org/sites/default/files/about-naic.pdf. The NAIC website includes the Annual Statement pages where you can access the Schedule T, Exhibit of Premiums and Losses (for P&C companies), Accident and Health Insurance and Life Insurance Part 1 (for Life and A&H companies). The Schedule T lists the premiums by state and shows any dividends claimed. The Exhibit of Premiums and Losses, Accident and Health Insurance and Life Insurance Part 1 breaks out the premiums by line of business and individual and group business. Auditors can review the totals by state only or by total reported. This is very helpful in determining the possible exposure for allocation on group or commercial business.

Information for review is available from various sources: prior audit files, taxability memos, division requests, experienced audit office personnel, fee system and Agency Work Manager (AWM) inquiries. Other resources include reference manuals, materials available in office or online, State Tax Automated Research System (STAR) and internet websites for the company or group of companies. This information should aid the auditor in:

- Learning more about the taxpayer's reporting methods and business operations.
- Understanding the taxpayer's account background and history of reporting.
- Establishing preliminary objectives for the audit plan.
- Identifying and researching possible company type problem areas.
- Becoming familiar with Comptroller policies and interpretations of law affecting the taxpayer’s industry.

Audit Assignment
When an audit is generated, a file is set up and the account is assigned to an auditor. It is Audit Division policy to research all insurance companies within the same insurance group designated by the NAIC without exception. Therefore, the auditor's first step should be to use the NAIC website or most current company listing in conjunction with the group listing from the TDI site to determine the current list of companies within a particular group:

- Determine the group name and obtain the listing of all insurance companies within that group. Obtain the most recent NAIC group listing of companies that have been downloaded. This Excel file resides on the Dallas East Audit Office’s common drive and is considered the best source for determining the group composition.

- Determine the companies within the NAIC group on which audit assignments should be generated. Research each company on the fee system and determine whether it is currently filing premium and maintenance tax returns. It is not necessary to generate an audit assignment on every company that is set up on the fee system. The auditor determines the need for a current audit using the online NAIC web-based system and searching for Texas premiums that have not been reported to Texas. Only those companies that have incorrectly reported or those that have some area of interest will be generated.

Records Request

After the questionnaire is received, the auditor and the taxpayer should agree upon an initial appointment date for beginning fieldwork. This is the appropriate time to request records the taxpayer should send in advance of the audit appointment. These records serve as the basis for the pre-audit research, preliminary review and preparation for fieldwork. Typically, an auditor might request copies of returns and backup worksheets, annual statements and the Texas State Page.

When requesting records, remain general in the description of records because record terminology may vary from taxpayer to taxpayer. The auditor should provide the taxpayer a written list of documentation to be made available for the audit. Written requests help avoid confusion between what has been requested and what has been received and leave an audit trail.

Following is a general list of records the auditor may request:

- Annual statements, although this is accessible via computer,
- Chart of accounts,
- General ledger,
- Electronic data file for all policies written/received **for all states** in which the company is licensed. The states included should match the states on Schedule T where premiums are shown,
- Policy journal,
- Duplicate state tax returns with working papers (Texas and state of incorporation),
- Texas State Pages for all years under audit,
- Copy of domicile state's most recent financial examination report,
- Copy of audited financial statements as prepared by outside CPA firm,
- Copy of corporate annual report,
- Copy of any merger or acquisition documents which occurred during the audit period (Be alert to possible mergers or acquisitions which might have terminated this taxpayer as a separate legal entity. The auditor can still audit the period for which the taxpayer did exist as a separate legal entity. Contact the new parent or the acquiring company to schedule the appointment.),
- Other records as deemed necessary by the auditor.

Computer/System Inquiries

Fee System (CICS) Inquiries

The following is a list of some commonly used inquiry codes and some of their uses.

T-Code	Auditing Use
XIRPTS	Used to order premium and maintenance tax histories by tax type.
XISUMM	Gives general information for the taxpayer by tax type. Data available includes taxpayer master mailing address, contact telephone number, etc.
XISTAT and MTSUMM	Gives information for all automated taxes administered by the agency for which the taxpayer is responsible.
XIADDR	Gives alternate mailing information (addresses) for any tax types.
XIDATA	Gives reported amounts by report period and tax type. It is useful for history updates and to check postmark dates on returns filed. It also notes the return type (regular, amended, estimated).
XIPMTS	Can be accessed through the XIDATA function and shows payments made for that report period.
XIAMAX	Gives the amounts for assessment credits (guaranty fund credits) that the taxpayer is allowed to take for a given report period.
XICOLL	Gives all open and closed collection records (Option 2). The auditor should be aware of any open collection records within the audit period prior to starting the audit. The auditor must verify if they are valid. Notify the taxpayer that valid open collection records are billed or refunded separately from an audit. Invalid records must be closed prior to submitting an audit. If an open collection record is due to a non-filer period, the return must be filed and the record closed prior to sending the audit to the RPC.
XIXINS	Provides a cross-reference for taxpayer numbers, TDI number and NAIC number.

The "PF" keys are helpful and allow the user to navigate through several inquiries at once. The PF11 trail, followed by comments, may give additional information such as refund, credit or amended return comments or comments regarding prior audit adjustments.

Agency Work Manager (AWM)

The Global Search query shows if a taxpayer has been audited for any tax type or if an audit is in progress. It is useful in checking if an entity has been audited prior to setting up audit leads or verifying that amounts were set up in another audit.

NAIC Inquiries

The taxpayer's annual statement information can be accessed through this system. NAIC group information is also available. See specific procedures for this system available in your office.

TDI Inquiries

The information provided by these inquires includes company history, company details, licensing information, operating status and lines of coverage. See specific procedures for this system available in your office.

Internet Inquiries

Information for a specific company or insurance group may be available on the website for that company. Information available on the company or group's website can identify possible areas of revenue subject to sales tax under Rule 3.355, Insurance Services.

Prior Audits

The auditor can determine if there has been a prior audit by accessing Global Search in Agency Work Manager and by reviewing the results and comments screens.

If there has been a prior audit:

- Note the prior audit period to avoid over-lapping audit periods and pick up the first period available after a prior productive audit,
- Look for errors and exceptions noted in the prior audit and discuss them with the taxpayer to determine if corrective action has been taken. Document this information in the audit plan, even if corrections were made. Often there is a period early in the audit, prior to the change, where current audit adjustments may be necessary,
- If the taxpayer disagreed with the audit, follow the audit through the hearings process to see how hearings decisions affected the audit,
- Study the prior audit plan, procedures and notes to become familiar with the type of records maintained. The prior audit plan may also be helpful in estimating the time required for current assignment completion. Also note whether there has been a change in the taxpayer contact. A change may indicate policy or reporting procedure changes in the current audit period.

A prior audit is not a blueprint for the current audit. Changes in tax law and business operations subsequent to prior audits are important areas to cover. The prior audit can be used to enhance the current auditor's use of time by identifying records examined, the difficulties of certain audit methods and areas where no errors were found that may require less emphasis in the current audit.

Global Search in AWM shows if the prior audit is available on the imaging system.

Taxability Research

Through examination of the history, audit questionnaires and other information, the auditor will know the type of insurer to be audited.

The following information can be used in researching various issues:

- Texas Insurance Code,
- Rules promulgated by the Comptroller,
- Administrative Hearings Decisions, available through STAR system,
- Taxability responses and interpretive letters to both taxpayers and auditors that are available through the STAR system,
- Agency Publications such as Tax Bulletins, Tax Policy News, etc.,
- Attorney General Opinions,
- Court of Appeals and Supreme Court Opinions Other sources of information such as the Directory of Corporate Affiliations, NAIC Listing of Companies, internet websites, etc.,
- Matrix of Insurance Reporting by Entity Type and Tax Code – See Appendix.

CHAPTER 3
LIFE AND ACCIDENT & HEALTH COMPANIES

Introduction

Every insurance carrier receiving premiums from the business of life insurance, including variable life insurance, and credit life insurance for profit or otherwise, or for mutual benefit or protection in this state, shall pay to the Comptroller a tax upon its gross premiums.

Every insurance carrier receiving premiums from the business of accident, health, life & accident, life & health, credit accident and health for profit or otherwise shall pay to the Comptroller a tax upon its gross premiums.

There are no Accident & Health companies. Accident & Health (A&H) premiums can be written by both life and property & casualty companies. Life companies write the majority of A&H premiums and can net the premiums from these two lines of business.

Premiums Definitions

Term	**Definition**
Gross Premiums	Gross premiums are defined as the total gross amount of all premiums, membership fees, assessments, dues and any other considerations for insurance received during the taxable year on every kind of insurance policy or contract covering persons located in the state of Texas. Gross premiums do not include dividends applied to purchase paid-up additions or to shorten the endowment or premium payment period, premiums received from other insurance carriers for reinsurance or returned premiums.
Miscellaneous Fees	Miscellaneous fees include any membership fees assessments, dues or other consideration for insurance received that are included in the insurance policy. These fees should be included in the taxable premiums reported to the Comptroller.
Rollovers	Certain types of life policies build up a cash value. If the insured surrenders the existing policy and instructs the insurer to apply the cash value to a new policy, it is considered a rollover of premiums. Internal rollovers occur when the insured purchases a new policy with the same insurance company. External rollovers occur when the insured takes the cash value and purchases a new policy from a different insurance company. External

Term	Definition
	rollovers are subject to premium and maintenance tax; however, internal rollovers are not.
Deductible Dividends	Deductible dividends are dividends that are applied to purchase paid-up additions to insurance or to shorten the endowment or premium payment period. If the company declares dividends to its policyholders and takes this amount as a deduction, verify that the amount of dividends used to purchase paid-up additions or shorten the premium paying or endowment period is not deducted twice on the annual tax return. The Texas State Page and the Schedule T amounts should already be net of dividends. Verify that the taxpayer has not claimed these twice by showing these amounts again on the return.
Returned Premiums	Returned premiums are a portion of the premium returned to a policy owner as a result of cancellation, rate adjustment or a calculation that an advance premium was in excess of the actual premium. Verify that the returned premium amount was not reported in Gross Premiums as taxable.
Annuities	An annuity is an agreement by an insurer to make fixed or variable periodic payments from a stated or contingent date. Payments continue for a specified period, such as for a number of years or for life. Annuities are not subject to premium tax. Annuities are subject to maintenance tax but only at the time that funds are applied to purchase an annuity contract.
Reinsurance	See Chapter on Reinsurance.
Stop-Loss Policies	Employers commonly provide health care benefits to their employees, and some do so through self-funding those benefits. Employers who self-fund their employee's health care benefits can purchase stop-loss insurance as part of financing those benefits. An insurer providing stop-loss policies to employers may allocate the premiums for premium tax and maintenance tax between Texas and other locations if the allocation method is reasonable and supported by sufficient evidence. A reasonable allocation methodology should: 1. Be calculated on a group-by-group basis.

Term	Definition
	2. Account for all individuals covered by the self-funded health plan to which the stop-loss insurance relates, including plan participants and dependents of plan participants. 3. Allocate plan participants with unknown addresses to Texas in the same proportion as the plan participants with known addresses. Assuming all other requirements in TIC Sections 222.002 (c)(5) and 257.003 (b)(2) are met, stop-loss policies qualify for single nonprofit trust exemption for both premium and maintenance taxes. See STAR Accession No. 202306004M for more details.
Non-Taxable Life and A & H Premiums	These are listed on the Computation of Non-Taxable Premiums, Form 25-205, and include the following: • Premiums from the United States Treasury or the Texas Treasury for the purpose of providing welfare benefits or for insurance contracted for by the state or federal government in accordance with or furtherance of the provisions of Title 2, Human Resources Code or the Federal Social Security Act. • Premiums from Medicare or Medicaid under the provisions of Title 2, Human Resources Code or the Federal Social Security Act. The definition of accident and health insurance premiums and HMO revenues received under TIC Chapters 222, 257 and 258 were amended in 2003. The changes made premiums received by insurers from the state treasury for insurance under the Medicaid and the Children's Health Insurance Program (CHIP) subject to both premium and maintenance taxes effective September 1, 2003. This change also applied to Federal funds that flow through the state treasury and are then used to pay premiums for Medicaid and CHIP programs. • Premiums for group policies issued to single nonprofit trust established to provide coverage for employees of municipalities or counties, including employees of hospital districts and employees of county or municipal hospitals, under TIC Chapter 222. Premiums must be paid by or through a "single nonprofit trust" and not simply paid by a city

Term	Definition
	or county in order to be exempt. The insurance carrier must maintain a copy of the trust agreement. All members of the Texas Association of Counties are covered by a single nonprofit trust; in order for the premiums to be exempt they must be bought and paid for through the Texas Association of Counties. • Premiums under TIC Chapter 1551, the Texas Employees Group Benefits Act. This Act covers both state employees and members of the Teacher Retirement System of Texas, as well as all other state agencies, boards, departments, divisions, institutions of higher education or any other agency of this state created by the constitution or statutes of this state. • Premiums under the Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System, under TIC Chapter 1601. • Premiums under the Texas Public School Employees Group Benefits Program under TIC Chapter 1575, covering retirees and members of the Teacher Retirement System of Texas who are actively employed by a public school but are not entitled to coverage under a plan provided under Chapter 1551 or 1601. • Premiums under the Texas 65 Health Insurance Plans under TIC Chapter 1505. A sample copy of the policy as issued must support the exemption. • Premiums received under the Federal Employees Health Benefits Program are preempted from taxation by Section 8909, Title 5, United States Code. • Company contributions to an employee health benefit plan are exempt. An insurer's contribution for life insurance for its own employees is an expense of the company and not revenue. If this deduction is taken, verify that the company's contribution is added back in or is included in Gross Premiums. • Employee contributions made from employees' salaries by insurance carriers for premiums on, or participation in, insurance benefits underwritten by the insurance carrier constitute taxable premiums and must be reported as a taxable premium.

Audit Activities

Premium Reconciliation

Reconcile Texas premiums from the Texas Page and Schedule T to the premium tax return for both life and A&H premiums. Accident & Health premiums written by property and casualty companies are listed as a separate line item on the Texas Page.

Verify that deductible dividends are not taken twice. For example, any deduction claimed must have been included in the "gross" amount to begin with.

Identify premium income accounts in the General Ledger or Trial Balance and reconcile to company-wide premiums on Schedule T.

Review the General Ledger or Trial Balance for miscellaneous income accounts that might be considered premium or other revenue accounts with Texas activity that might be subject to sales tax, such as appraisal services.

Review the Underwriting and Investment Exhibit/Statement of Income in the Annual Statement for miscellaneous income. If there is miscellaneous income, note it in the aggregate write-in section.

Review the most recent Financial Examination Report or Summary and the most recent financial statements prepared by outside CPAs for indications of potential reporting problems.

Review the Annual Statement Summary of Operations for reported miscellaneous income. If material, request detail to identify the source and determine taxability.

Test of Internal Controls

The test of internal controls is conducted in conjunction with the policy review.

Verify that the total amount of the policy premium and any related taxable line items are carried to the taxpayer’s premium income accounts. Confirm that the premiums are not reported at a net amount, e.g., net of commissions.

If the premium is allocated to an account that does not tie to company-wide premiums on Schedule T, question the taxpayer about the nature of the account. Determine if it should be included as a taxable account.

Policy Review

The purpose of the policy review is to verify Membership fees, policy fees, dues or any other consideration for insurance included on policies with Texas exposure have been reported as Taxable Premium and the allocation of premiums to the various states as noted on Schedule T. According to TIC Section 222.002(b), premiums should be based on the location of the insured. However, some companies may use other methods, such as the billing address for the policy, to allocate the premium.

The first step in the policy review is to determine the taxpayer's method for allocating policy premiums. If the taxpayer states that premiums are allocated based on the location of the insured, randomly select some policies and review the original policy application to determine the risk state.

Verify that the taxpayer's policy system is allocating the premium to the location of the insured. If the preliminary review shows that the taxpayer is allocating premiums based on the location of the insured, the policy review can be discontinued.

The findings may show that the taxpayer is not allocating the premiums based on the risk state or the taxpayer may inform you that the premiums are allocated based on some method other than by the location of the insured. If this is the case, target the review to those areas where the potential for allocation errors exists.

One area where life and A&H premiums may be misallocated is group policies. Texas law mandates that allocations be based on the location of the insured. The NAIC allows insurers to allocate premiums using accepted industry standards. These standards are based upon the address of the individual policyholder or the group address if the group membership is less than the specified base amount. Commonly the bases are 100, 200 or even 500 lives.

Another potential area of misallocation is company owned or bank owned life insurance coverage. These policies are often referred to as COLI or BOLI policies and frequently are misallocated to the state where the company, bank or trust account is located. Evaluation of the coverage and examination of the policy file is necessary to determine if there is any Texas risk.

Verify the method of allocating both individual and group life premiums. Verification of how the insurance carrier is allocating premiums can be conducted during testing of internal controls and the review of policies. The taxpayer may allocate the entire group premium to the state from which the premium is paid, even though all the individuals in the group may not reside in the same state. Footnotes on Schedule T at the bottom explains how the premiums are allocated. These are under Footnote B Explanation of basis of allocation by state, etc. Examples are:

1. Premium is allocated on the insured's state of residence,
2. Premiums are recorded by location of risk,
3. Premiums and annuity considerations are allocated on the basis of the address which has been designated by the policyholder for premium notice purposes and
4. Location of property insured for all lines of business – exceptions: ocean marine.

This does not include all the footnote explanations for how premiums are allocated.

For example, a drilling company might have its headquarters in Louisiana. The covered employees may reside in both Louisiana and Texas. The group policy premium should be allocated to both Louisiana and Texas based on some reasonable allocation method for the specific policy.

In order to confirm the allocation of group business, the auditor should request detailed data files for company-wide group life and health business for each year. The data should be provided in a format compatible with Excel or Access. The auditor's laptop should have sufficient memory and hard drive space to accommodate the largest of files. After the file totals are verified against a control total, the files allow the auditor to examine the group policy details, to set materiality levels and to determine whether the policies have been properly allocated to the correct states.

During the 2007 session, the Texas Legislature clarified the taxation of life, health and accident policies and coverage by Health Maintenance Organizations. Section 2 of HB 3315 amended TIC Section 222.002(b) to state that taxpayers:

> "... shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups located in this state ..."

Decisions for designing review procedures are left to the auditor's judgment and based on each company's record system and business model. Often the level of confidence the auditor has in the internal controls of the taxpayer determines the procedures needed.

Tax Rate

The tax rate for life and A&H premiums is fixed at 1.75%. The first $450,000 in Life premiums are taxed at half of the fixed rate.

Other Areas

- Reinsurance: See Reinsurance, Chapter 7
- Tax Credits: See Premium Tax Credits, Chapter 9
- Retaliatory Tax: See Retaliatory Tax, Chapter 10
- Maintenance Tax: See Maintenance Taxes, Chapter 12
- OPIC Assessment: See OPIC Assessment, Chapter 14
- Statutory Reference: TIC Chapter 222

CHAPTER 4
PROPERTY & CASUALTY COMPANIES

Introduction

Property and casualty insurance companies include every insurance carrier, including Lloyd's and reciprocal exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability or any other kind or character of insurance in this state.

Excluded from this classification are fraternal benefit associations, cooperative or mutual fire insurance companies administered by the members solely for the protection of their own property, life, accident and health insurance companies and title insurance.

The 2017 legislature exempted all farm mutual insurance companies from premium and maintenance taxes. Farm mutual insurance companies acting as a “fronting insurer” are subject to premium tax. Sec. 221.001(c) defines a “fronting insurer” as a farm mutual insurance company issuing an insurance policy that is the result of:

- Marketing by an insurer not affiliated with the farm mutual insurance company.
- An application submitted by a consumer to an insurer not affiliated with the farm mutual insurance company; or
- An agreement with an insurer that is not a farm mutual insurance company solely for the purpose of being regulated under Chapter 911; or
- That cedes 85% or more of the farm mutual insurance company's direct written premium to one or more nonaffiliated reinsurers.

The Miscellaneous Tax Section of Revenue Accounting mails a questionnaire to all licensed farm mutual companies each December, requesting the company indicate whether it is a fronting insurer in the current tax year.

Definitions

Term	Definition
Property & Casualty Premiums	The total gross amount of premiums actually written during the taxable year on each and every kind of insurance or risk written upon property or risks located in the state of Texas, except premiums actually written by other licensed companies for reinsurance, return premiums and dividends paid to policyholders. Effective June 15, 2007, TIC Section 221.002 was amended to include home warranty premiums in the definition of taxable premiums written by property and casualty insurers. Effective September 1, 2013, premium or service fees retained by a bail bond surety that is licensed under the Occupations Code or a property and casualty agent are exempt from premium tax.

Term	Definition
Policy Fees	Any other charges listed on the face of the policy application and paid by the insured. Policy fees are taxable premiums.
Retrospectively Rated Policies	A retrospectively rated insurance policy is one where the final premium is determined after the policy period, based on the actual loss experience of the insured. Instead of being calculated in advance, the premium is adjusted to reflect incurred or paid losses during the policy term. Any increases or decreases **must** be booked to the premium income account and the auditor must verify that the premium adjustments were correctly reported. Changes in premiums are required to be reported in both the premium and maintenance tax bases. These types of policies are generally workers' compensation policies, although other lines of business may be subject to retrospective rating.
Reinsurance	See Chapter 7, Reinsurance.
Stop-Loss Policies	Insurance coverage purchased to limit its exposure or to cut off losses at a given point. Typically, these are excess medical liability plans but may involve other types of coverages. Stop-loss policies are not reinsurance under the TIC but represent a policy of insurance issued for a specific purpose. Refer also to Chapter 7, Reinsurance.
Umbrella Policies	Excess liability coverage purchased above the limits of an underlying insurance policy. Refer to the Policy Review section for more information.
Non-taxable Premiums	Premiums listed on the Computation of Non-Taxable Premiums, Form 25-205, including the following: • Returned premium • Dividends paid to policyholders • FCIC multi-peril crop preemption • TIC Chapter 2004, Property Protection Program for Underserved Areas
Travel Insurance	Insurance coverage for personal risks incident to planned travel, including: • Interruption or cancellation of a trip or event • Loss of baggage or personal effects • Damages to accommodations or rental vehicles • Sickness, accident, disability or death occurring during travel

Term	Definition
	• Emergency evacuation • Repatriation of remains • Any other contractual obligations to indemnify or pay a specified amount to the traveler on determinable contingencies related to travel as approved by the commissioner. Travel insurance does not include a major medical plan that provides comprehensive medical protection for a traveler on a trip of longer than six months, such as an individual working or residing overseas as an expatriate or any other insurance product that must be sold by an agent with a specific agent's license.
Travel Protection Plan	A plan that provides one or more of the following: • Travel insurance, • Travel assistance services – defined in TIC Section 3504.0001(10), Definitions, • Cancellation fee waiver – defined in TIC Section 3504.0001(3) Travel assistance services and cancellation fee waivers are not insurance and amounts received for those items are not subject to insurance tax.

Audit Activities

Premium Reconciliation

Reconcile Texas premiums from the Texas Page and Schedule T to the premium tax return.

Verify procedures for umbrella policy allocations, internal controls, stop-loss policies, retrospectively rated policies, reinsurance assumed and any source of miscellaneous income.

Verify that the return premium has not been previously netted from gross premiums before claiming the deduction on the return. It is important to remember that a situation may be encountered where total returned premiums, dividends, etc., may be greater than premiums written, resulting in negative premiums written. The statute does not contain a provision allowing taxable amounts less than zero and so in these situations, zero must be reported.

Verify that deductible dividends are not taken twice. For example, any deduction claimed must have been included in the "gross" amount to begin with.

Identify premium income accounts in the General Ledger or Trial Balance and reconcile to company-wide premiums on Schedule T.

Review the General Ledger or Trial Balance for miscellaneous income accounts that might be premium accounts.

Review the Underwriting and Investment Exhibit/Statement of Income in the Annual Statement for miscellaneous income. If there is miscellaneous income, note it in the aggregate write-in section.

Review the most recent Financial Examination Report or Summary and the most recent financial statements prepared by outside CPAs for indications of potential reporting problems.

Test of Internal Controls

The test of internal controls is conducted in conjunction with the policy review.

Verify that the total amount of the policy premium and any related taxable line items are carried to the taxpayer's premium income accounts. Confirm that the premiums are not reported at a net amount, for example net of commissions.

If the premium is allocated to an account that does not tie to company-wide premiums on Schedule T, question the taxpayer about the nature of the account. Determine if it should be included as a taxable account.

Policy Review

The purpose of policy review is to verify Membership fees, policy fees, dues or any other consideration for insurance included on policies with Texas exposure have been reported as Taxable Premium and the allocation of premiums to the various states as noted on Schedule T. According to TIC Section 221.002(b), premiums should be based on the location of the risk. However, some companies may use other methods, such as the billing address for the policy or the location of the corporate headquarters, to allocate the premium.

The first step in policy review is to determine the taxpayer's method for allocating premiums. Determine whether the taxpayer writes any type of policies with multiple state risk coverage. Verify that the allocation of premiums is based on the location of the risk.

Ask the taxpayer to provide documentation or reports showing the allocation state for policies with potential multi-state risks. Examine the reports and select some test policies with potential Texas risk. Sources for determining potential locations in Texas include CICS inquiries, company internet websites and the Directory of Corporate Affiliates.

Review the policy application, policy file and other source documents such as endorsements to determine the risk state. Verify that the taxpayer's policy system is allocating the premium to the location of the risk to test the reliability of the system. If this preliminary review shows that the taxpayer is allocating premiums based on the location of the risk, the policy review can be discontinued.

The findings may show that the taxpayer is not allocating the premiums based on the risk state or the taxpayer may inform you that the premiums are allocated based on some method other than the location of the risk. If this is the case, target the review to those areas where the potential for allocation errors exists.

One area where property & casualty premiums may be misallocated is the umbrella policies. Other lines such as commercial automobile, commercial multi-peril for property and/or liability, product liability and excess liability policies could have multi-state risks. Other liability coverage, such as officer and director policies, could also have multi-state risks.

Another area of risk is travel insurance which may be listed as a combined price in the policy documentation. The data tying to Schedule T used to make policy selections may only reflect the portion recognized as insurance by the insurance company under audit. The insurance company under audit may not be aware that premium for Texas tax reporting does not always equal premium for NAIC reporting. Decisions for designing review procedures are left to the auditor's judgment and based on each company's accounting system(s), administration system(s) and business model.

Often the level of confidence the auditor has in the internal controls of the taxpayer determines the procedures needed.

Tax Rate

Beginning with tax year 2000, the tax rate for property and casualty premiums is fixed at 1.6%.

Miscellaneous

Accident & Health Premiums

Property and Casualty companies can write Accident & Health premiums at the tax rate of 1.75%. See the Life Chapter for a discussion of Accident & Health audit procedures.

Other Areas

- Reinsurance: See Reinsurance, Chapter 7
- Tax Credits: See Premium Tax Credits, Chapter 9
- Retaliatory Tax: See Retaliatory Tax, Chapter 10
- Maintenance Tax: See Maintenance Taxes, Chapter 12
- OPIC Assessment: See OPIC Assessment, Chapter 14
- Statutory Reference: TIC Chapter 221

CHAPTER 5
HEALTH MAINTENANCE ORGANIZATIONS

Introduction

A Health Maintenance Organization (HMO) is an entity that provides or arranges health care services for enrollees on a prepaid basis. Basically, an HMO is taxed in the same manner as a Life Insurer.

Definitions

Term	Definition
Taxable Premiums	These are defined as the gross revenues **collected** for the issuance of HMO certificates or contracts.
Non-Taxable Life and A & H Premiums	These are listed on the Computation of Non-Taxable Premiums, Form 25-205, and include the following: • Premiums from the United States Treasury or the Texas Treasury for the purpose of providing welfare benefits or for insurance contracted for by the state or federal government in accordance with or furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. • Premiums from Medicare or Medicaid under the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. The definition of accident and health insurance premiums and HMO revenues received under TIC Chapters 222, 257 and 258, were amended in 2003. Effective Sept. 1, 2003, premiums received by insurers from the state treasury for insurance under the Medicaid and the Children's Health Insurance Program (CHIP), are subject to both premium and maintenance taxes. This change also applies to federal funds that flow through the state treasury and are then used to pay premiums for Medicaid and CHIP programs. • Premiums for group policies issued to single nonprofit trust established to provide coverage for employees of municipalities or counties, including employees of hospital districts and employees of county or municipal hospitals, under TIC Chapter 222. Premiums must be paid by or through a "single nonprofit trust" and not simply paid by a city or county in order to be

Term	Definition
	exempt. The insurance carrier must maintain a copy of the trust agreement. For example, all members of the Texas Association of Counties are covered by a single nonprofit trust; in order for the premiums to be exempt they must be bought and paid for through the Texas Association of Counties. • Premiums under TIC Chapter 1551, the Texas Employees Group Benefits Act. This Act covers both state employees and members of the Teacher Retirement System of Texas, as well as all other state agencies, boards, departments, divisions, institutions of higher education or any other agency of this state created by the constitution or statues of this state. • Premiums under the Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System, under TIC Chapter 1601. • Premiums under the Texas Public School Employees Group Benefits Program under TIC Chapter 1575, covering retirees and members of the Teacher Retirement System of Texas who are actively employed by a public school but are not entitled to coverage under a plan provided under Chapter 1551 or 1601. • Premiums under the Texas 65 Health Insurance Plans under TIC Chapter 1505. A sample copy of the policy as issued must support the exemption. • Premiums received under the Federal Employees Health Benefits Program are preempted from taxation by § 8909, Title 5, United States Code. • Company contributions to an employee health benefit plan are exempt. An insurer's contribution for life insurance for its own employees is an expense of the company and not revenue. If this deduction is taken, verify that the company's contribution is added back in or is included in Gross Premiums. • Employee contributions made from employees' salaries by insurance carriers for premiums on, or participation in, insurance benefits

Term	Definition
	underwritten by the insurance carrier constitute taxable premiums and must be reported as a taxable premium.
	During the 2007 session, the Texas Legislature clarified the taxation of life, health and accident policies and coverage by Health Maintenance Organizations. Section 2 of HB 3315 amended TIC Section 222.002(b) to state that taxpayers:
	"... shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups located in this state..."

Audit Activities

Premium Reconciliation

The HMO's Annual Statement contains schedules and exhibits listing gross premiums written, collected, receivable, earned and unearned. Schedule T – this usually lists the premiums as written. The basis for reporting is checked at the bottom of Schedule T.

Premiums, Enrollment and Utilization Table – this report lists premiums collected, receivable, unearned and earned. Effective with the 2004 Annual Statement, this table no longer shows the collected premium. Another source for collected premiums would be the Cash Flow Statement. If using the Cash Flow Statement to verify the accuracy of reported amounts, compare the amounts to the Schedule T premium amount less accounts receivable and look for experience rebates which might be netted out of the Cash Flow statement. Income Statement – these reports also show premiums amounts.

Determine what documents the taxpayer uses to obtain the amounts reported on the tax return. If Annual Statement amounts are used, tie the amounts to the audited financial statements.

Determine if the premiums received can be crosschecked to a receivable. Verify that payments received match amounts invoiced to customers.

Determine if the HMO maintains adequate records to support the method of reporting premiums received.

Determine if there are other sources of revenue. Fees-for-service and co-payments are amounts an HMO or provider collects for services that are not covered under the contract. The fees are paid out by the HMO to the providers rather than retained as revenues. If the HMO retains any part of the fees or co-payments, they are subject to tax.

Determine the reliability of the records provided by testing internal controls as appropriate. Trace revenues received from source documents to the billing journals and through the accounting system. Perform other tests as needed.

Verify Non-Taxable Premiums

Determine what documents the taxpayer uses to obtain the non-taxable premium amounts reported on the tax return.

Determine if the non-taxable premiums received can be traced to a receivable. Verify that non-taxable payments received match amounts invoiced to customers.

Policy Review

Generally, HMOs market to groups within a single state. As with policy review conducted on other types of companies, verify that the premiums are allocated to the states where the group members reside.

Decisions for designing review procedures are left to the auditor's judgment and based on each company's accounting system(s), administration system(s) and business model. Often the level of confidence the auditor has in the internal controls of the taxpayer determines the procedures needed.

Tax Rate

Beginning with the 1995 tax year the tax rate for HMO premiums is fixed at 1.75%. The first $450,000 in premiums is taxed at half of the fixed rate.

Other Areas

- Tax Credits: See Premium Tax Credits, Chapter 9
- Retaliatory Tax: See Retaliatory Tax, Chapter 10
- Maintenance Tax: See Maintenance Taxes, Chapter 12
- OPIC Assessment: See OPIC Assessment, Chapter 14
- Statutory Reference: TIC Chapters 843/225/258

CHAPTER 6
TITLE INSURANCE COMPANIES

Introduction

Title Insurance means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered from a defect in the property's title. Possible title defects include, but are not limited to errors in deeds, mistakes made in examining records, forgery, undisclosed heirs, missing heirs, liens for unpaid taxes and liens by contractors.

Premium tax is levied on all the amounts defined to be premiums, whether paid to the Title Insurance Company or retained by the Title Insurance Agent. Refer to TIC Chapter 223.

Title premiums are defined as the total amount of premiums received for the taxable year on title insurance written on property located in Texas, except premiums received from other licensed title insurance companies for reinsurance, less return premiums paid to policyholders with no deduction for premiums paid for reinsurance.

For the title insurance premium tax, premiums are defined by TIC Section 2501.003(8) (Definitions) as:

> "…the premium rates promulgated by the commissioner under Subchapters D and E, Chapter 2703, and includes a charge for:
> (A) title examination and closing the transaction, regardless of whether the examination or closing is performed by an attorney; and
> (B) issuing the policy."

The charges for title examination, for closing the transaction and for issuance of the policy are included in taxable premiums. For Texas, these are the all-inclusive premiums shown on Schedule T. Escrow fees are not considered title premium and the Department of Insurance sets the basic premium rates based on the policy's face value. Title insurers are not authorized to charge the insured amounts other than allowed by statute.

It is possible that title insurers might be performing services subject to sales tax. Inquire into the company's operations, and any services performed for unrelated entities.

The State of Texas facilitates the collection of the premium tax and the maintenance fee on the portion of the premium retained by the agent by setting the division of the premium between insurer and agent so that the insurer receives the premium tax and maintenance fee due on the agent's portion of the premium and remits it to the State. Currently the agent is required to remit 15% of the premium collected to the insurer and retains 85%.

Premium tax is levied on all the amounts defined to be premiums, whether paid to the Title Insurance Company or retained by the Title Insurance Agent. See TIC Chapter 223.

There are no exempt title premiums.

Audit Activities

Premium Reconciliation & Summary Records Review

Reconcile Texas premiums from the Texas Page and Schedule T to the premium tax return.

Identify premium income accounts in the General Ledger or Trial Balance and reconcile to company-wide premiums on Schedule T.

Review the most recent Financial Examination Report or Summary and the most recent financial statements prepared by outside CPAs for indications of potential reporting problems.

Review financial statements, general ledger, trial balances and other summary records for income subject to sales tax per Rule 3.355 – Insurance Services.

Test of Internal Controls

The test of internal controls is conducted in conjunction with the policy review. If the premium is allocated to an account that does not tie to company-wide premiums on Schedule T, question the taxpayer about the nature of the account. Determine if it should be included as a taxable account.

Policy Review

The purpose of the policy review is to verify Membership fees, policy fees, dues or any other consideration for insurance included on policies with Texas exposure have been reported as Taxable Premium and the allocation of premiums to the various states as noted on Schedule T. The Texas statute says that premiums should be allocated based on the location of the risk. Title insurance premiums should be allocated to the state where the property being insured is located.

The auditor should determine how the premiums are allocated among the states and then perform appropriate review to ensure that the method is correct. Generally, in the case of title companies, allocations are not an issue since the location of the property controls all aspects of the title company's business. This includes all activities performed on behalf of the buyer and seller prior to closing. The settlement statement includes charges to each party, such as payment of school district and other local taxes, in addition to real estate commissions and miscellaneous charges.

Decisions for designing review procedures are left to the auditor's judgment and based on each company's accounting system(s), administration system(s) and business model. Often the level of confidence the auditor has in the internal controls of the taxpayer determines the procedures needed.

Tax Rate

The tax rate for title premiums is fixed at 1.35%.

Other Areas

- Tax Credits: See Premium Tax Credits, Chapter 9
- Retaliatory Tax: See Retaliatory Tax, Chapter 10
- Maintenance Tax: See Maintenance Taxes, Chapter 12
- OPIC Assessment: See OPIC Assessment, Chapter 14
- Statutory Reference:
  - TIC Chapter 223
  - TIC Chapter 2501.003
  - TIC Chapter 2501.005TIC Chapter 2501.006
- Rule: 3.831

CHAPTER 7
REINSURANCE

Reinsurance

Reinsurance is a transaction that involves the acceptance by an insurer (the reinsurer) of all or part of the risk on a policy written by another authorized insurer (the ceding company). It is a way for the ceding company to spread the risk on large or catastrophic policies and to allow the insurer to write more business. In order to be classified as reinsurance, a contractual agreement must exist between the two insurance companies.

Premium tax is reported by the ceding insurer on the original policy premium. Premium tax is not due on reinsurance premiums paid by the ceding insurer to the assuming insurer.

Reinsurance assumed and ceded is reported on Schedule S of the Annual Statement for life companies and Schedule F of the Annual Statement for property & casualty companies. When reviewing "Name of Reinsured," insurance companies listed should have a FEI number and an NAIC number listed on the Reinsurance Assumed Schedule. Examine these schedules for names other than insurance companies because we often find that stop-loss policies or other types of policies are considered reinsurance by the insurer and are not reported as taxable premium.

Review the assumed schedule of the company that you are auditing to determine the dollar amount of the reinsurance assumed. Use the NAIC system to verify that the other company reported the premiums on their ceded schedule.

If the reinsurance was not reported as ceded, review the reinsurance treaty to determine if the transaction represents the sale/purchase of a block of business.
If a sale/purchase of a block of business occurs, the company assuming the premiums is responsible for reporting the premium tax. The auditor needs to determine how much of the assumed premiums relate to Texas risks.

If an insurance company purchases coverage for its own use from another insurance company, e.g., employees' group health plan, the premiums are subject to premium tax and are reportable by the company issuing the policy.

Examples of taxable direct premiums misclassified as reinsurance assumed include:

- Stop-loss insurance written on a self-funded employer plan to cover excess losses or benefits. In this situation, the ceding company is likely to be a non-insurer.
- Premiums assumed from a Multiple Employee Welfare Arrangement (MEWA). See STAR Accession No. 9701137L (Jan. 17, 1997).

CHAPTER 8
CAPTIVE INSURERS

Introduction

According to the NAIC Glossary of Insurance Terms, a captive insurer is “an insurance company established by a parent firm for the purpose of insuring the parent’s exposures.” The International Risk Management Institute, Inc. (IRMI) adds to the definition of a captive that “the captive provides insurance to sophisticated insureds that require less policyholder protection than the general public.”

In 2013 the 83rd Legislature passed Senate Bill (SB) 734 allowing captive insurance companies to be licensed by TDI. TIC Chapter 964.001 defines a “Captive Insurance Company” as a “company that holds a certificate of authority under this chapter to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business.” Captive insurance companies must comply with TDI requirements to be recognized as a licensed captive. In 2017 the 85th Legislature added captive exchanges to be organized under the same rules established for licensed captive insurance companies.

The XISUMM inquiry for tax type 71 identifies the process type code for a licensed captive insurance company as “60” and licensed captive exchanges as “61”.

Licensed captive insurance companies are subject to a 0.5% premium tax rate with a minimum premium tax of $7,500 and a maximum premium tax of $200,000. Premium tax is assessed on the premiums written by the captive without regard to location of risks. Premium tax exam credits can be claimed for exam expenses paid to TDI during the applicable year.

The TIC Chapter 223A.003(c) identifies only three sources of non-taxable premiums:

- Premium receipts received from another authorized insurance company for reinsurance,
- Returned premiums and dividends paid to policyholders and
- Premiums excluded by another law of this state.

No deduction is allowed for premiums paid for reinsurance by the captive insurance company.

Maintenance tax is based on the location of risk based on the individual line of business. No minimum or maximum tax amount was established for maintenance tax. Licensed captives are exempt from the OPIC assessment.

Captive insurance companies not licensed by TDI are considered non-admitted and are subject to the unauthorized premium tax rate of 4.85%. See Chapter 16, Unauthorized Insurance, in this manual for additional information relating to unlicensed captive insurance companies.

Audit Activities

The auditor's function is to determine whether all premiums are reported to the Comptroller. The audit procedures used depend upon the types of records maintained by the captive insurance company. The total premium tax for each return period, including adjustments made, are subject to the $7,500 minimum and $200,000 maximum.

Reconciliation of Premiums

A detailed data file of premiums written for each year under audit is necessary to reconcile to both summary records and to reported gross and returned premiums on the premium and maintenance tax returns filed.

Due to the different basis for reporting the premium and maintenance taxes, the data file needs to identify risk locations. Additional fields are necessary to support policy information. This includes but is not limited to names, addresses, policy numbers, premiums, effective dates and accounting dates.

Internal Controls and Policy Review

After the premium data file is reconciled to the summary records and premium and maintenance tax returns, a policy review is necessary to verify internal controls. It also facilitates the verification of taxed and non-taxed treatment of policies written by the captive. The policy review further supports premium amounts written and location of risk.

Schedule any material differences subject to premium tax, subject to the annual minimum and maximum previously referenced. Schedule material premium differences and location of risk adjustments subject to maintenance tax.

Current Policy

- Maintenance Tax: See Maintenance Taxes, Chapter 12
- Statutory Reference:
    - TIC Chapter 223A
    - TIC Chapter 964
    - TIC Sec. 101.053
    - TIC Sec. 226.003

CHAPTER 9
PREMIUM TAX CREDITS

Introduction

There are four types of credits reported on the premium tax return. These are TDI examination expense and overhead assessment credits, guaranty association assessment credits (guaranty association assessments, Texas Windstorm Insurance Association Credits (TWIA)), CAPCO credits and historic structure credits. The sources used to verify credits do not vary by company types.

Credits

Examination Expense and Overhead Assessment Credits

The examination expense credits apply to both domestic and foreign insurers. The overhead assessment applies only to insurers that are incorporated in Texas. Both of these credits are found on the Excel spreadsheets provided to the Comptroller by TDI. The Miscellaneous Taxes Section of the Revenue Accounting Division in Austin reviews these credits each year and amends the taxpayers’ returns to make any necessary corrections.

Senate Bill 1 from the 2011 Legislative session disallowed the tax credit for TDI examination and overhead assessment expenses paid in tax years 2012 and 2013. This change expired January 1, 2014, and beginning with the 2014 tax year these credits are once again allowed.

Examination fees and overhead assessments that cannot be used in a tax year do not carry forward to future years. These credits are used before guaranty association assessment, CAPCO and historic structure credits.

Guaranty Association Assessment

The guaranty association assessment credits currently consist of the life and health, property and casualty or title insurance guaranty association assessment credits. The assessment credit is preprinted on the taxpayer's return, or if filing in Webfile, the total available is applied automatically. This amount ties to the total credit available that is shown on the XIAMAX inquiry for each report year.

If there is not enough premium tax to absorb the guaranty association assessment credit available for a report year, the unused credit is carried forward for use in future report years until exhausted.

There is no guaranty association for HMOs in Texas. Therefore, guaranty association assessment credits are not applicable to HMOs.

- Other Reference: Comptroller of Public Accounts Rule 3.830
- Statutory Reference:
    - TIC Chapters 221, 222, 223, 223A and 224providing for a credit for examination expenses and overhead assessments paid

- TIC Chapter 401.151, 401.152 and 401.154 (TDI Examination Expenses & Tax Credits)
- TIC Chapter 462 (Texas Property and Casualty Guaranty Association)
- TIC Chapter 463 (Texas Life and Health Insurance Guaranty Association)
- TIC Chapter 2602 (Texas Title Insurance Guaranty Association)
- TIC Chapter 803 (Location of Books, Records, Accounts and Offices Outside of the State)

CAPCO Credits

Certified Capital Companies (CAPCOs) are private venture capital companies that invest money in qualified businesses in this state. The insurers making an investment in a CAPCO are "certified investors" and for Program I, these companies may take a 25% tax credit against premium tax owed beginning with the 2008 tax year, due March 1, 2009. Program II credits can be used for four years beginning with the 2012 tax year, due March 1, 2013. Any remaining credits may be taken in successive years until exhausted. The credit may be used to reduce the tax liability to zero, but it cannot result in a refund. These credits are found on XIAMAX and show a "C" designation.

Only "certified investors" may transfer CAPCO credits to other certified investors.

Texas Windstorm Insurance Association Credits (TWIA)

The Texas Windstorm Insurance Association (TWIA) was established by legislative mandate to provide wind and hail insurance for Texas gulf coast property owners in the event of catastrophic loss. Formerly called the Texas Catastrophe Property Insurance Association (CATPOOL), TWIA provides basic coverage unavailable in traditional markets for consumers who might otherwise be left uninsured.

The first $100 million assessment and a portion of the catastrophe reserve trust fund were used to cover losses from Hurricane Dolly, which hit Texas in July 2008. TWIA made a second assessment of $430 million in September of 2008 to cover losses from Hurricane Ike.

These credits are found on XIAMAX and show a "CAT P – B" designation. The credits are allowed to be claimed at 20% per year, and unused credits may be carried forward until exhausted. In 2009, statutory revisions included restructuring the payment process for covered losses from windstorm and hail damage in certain portions of the seacoast territory of this state, defined as the first and second tier coastal counties. These changes also removed the premium tax credit going forward, and only insurers with remaining balances report this credit.

Historic Structure Credit

Tax credits for Certified Rehabilitation of Certified Historic Structures was established by the 2013 legislature, but the credits originally applied to entities with franchise tax responsibilities only. In 2017, the 85th Legislature passed SB 550 which added a provision in Texas Tax Code (TTC) Section 171.908(e) (Sale or Assignment of Credit) allowing the credit to be sold or assigned and subsequently applied to premium tax liabilities imposed under TIC, Chapters 221, 222, 223 and 224. This includes coverage written by P&C, life, A&H, title and reciprocal and interinsurance exchange insurers.

SB 550 was passed with an effective date of May 4, 2017, allowing the credit to be applied to the 2017 annual premium tax return. The credit is limited to 25% of the total eligible costs and expenses to rehabilitate a historic structure as defined by IRC Section 47(c)(2) (Rehabilitation Credit). In 2021, the 87th Legislature passed HB 3777 which provided that expenditures incurred by an entity exempt from franchise tax to rehabilitate a structure that is leased to a tax-exempt entity in a disqualified lease, defined by IRC Section 168(h), (Accelerated Cost Recovery System), are not eligible costs or expenses.

In 2023, the 88th Legislature passed SB 1013 which transferred TTC Subchapter S, Chapter 171 to TTC Subtitle F, Title 2 and referred to as TTC Chapter 172. The changes in law made by SB 1013 do not affect the validity of a credit that accrued under TTC Subchapter S, Chapter 171 before the effective date of SB 1013. The credit continues in effect as a credit under TTC Chapter 172 as transferred, redesignated and amended by SB 1013. The bill also allowed insurance companies to establish and claim the credit, whereas previously insurance companies could only claim a credit that they had purchased or been assigned.

In 2025, the 89th Legislature passed HB4044 which amended TTC Section 172.102(b), Eligible Costs and Expenses, of the Tax Credit for Certified Rehabilitation of Certified Historic Structures by adding institutions of higher education or university system as defined by Education Code Section 61.003. This amendment expires on January 1, 2035, and will be amended as Sec. 172.102(b) is prior to the effective date of this amendment.

Historic structure credits can only be applied after other credits are applied to the premium tax returns. Any unused credits can be carried forward for not more than five consecutive reports.

An entity claiming all or part of a credit as authorized by TTC Chapter 172 is not required to pay any additional retaliatory tax levied under TIC Chapter 281, as a result of claiming that credit.

Available credit amounts are recorded in CICS when the historic structure credit is set up. The historic structure has an XIMAST set up with the organization type as “Historic Structure (HS).” XIHCRG inquiry identifies all certificates of eligibility issued to a historic structure. XIOWCR allows for a search by structure ID or by credit owner ID. The search by structure ID calls up all credit owners for a specific historic structure. The search by credit owner ID identifies all the historic structure credit certificates associated with the credit owner searched. The activity option shows the detail of all activity related to the selected credit. XIHNOT inquiry lists all the Historic Structure Credit Certificates (HCC) which have been issued.

When historic structure credits are claimed on premium tax returns, additional documentation is required at the time of the filing. This documentation includes the Texas Historic Structure Credit Supplement, Form 25-125, and the Texas Historic Structure Credit Certificate, Form 05-901, for each historic structure claimed on Form 25-125. These forms should be imaged with the return copy when processed by Revenue Accounting. The Miscellaneous Taxes Section of Revenue Accounting verifies the historic structure credits claimed by each insurer on their original annual return.

Audit Adjustments/Verification

Discrepancies found in reported credits, except for historic structure credits, should be approved by Audit Headquarters Technical Support Section before contacting the Supervisor of Miscellaneous Taxes Section in Revenue Accounting. Written documentation should be included in the audit plan. Verified differences in **credits**, except for historic structure credits, **should not** be scheduled as adjustments in an audit. Differences in **assessment credits** are not scheduled as audit adjustments. Currently, application of available guaranty fund credits to a period within an audit is handled as a refund verification after receipt of the taxpayer's written request.

During an audit, the historic structure credit needs to be verified. The first report on which the credit may be claimed is the report based on the accounting period during which the rehabilitated historic structure is placed in service. The total credit claimed for a report may not exceed the amount of premium tax due. Historic Structure Credit documents, CICS inquiries, Audit History and Historic Structure Credit Structure History should be reviewed to verify the credit is available for the report period under audit. The Historic Structure Credit Template should be used as the Historic Structure Credit supplemental exam.

When a credit is claimed in an audit assignment, a review comment including a short description of the assignment with the result and the statement, “Historic Structure adjustment to be completed by Account Maintenance,” should be entered in AWM.

For example:

- Refund – Approved 100%
- Historic Structure adjustment to be completed by Account Maintenance

Current Policy

- Statutory Reference: Texas Tax Code Chapter 172, (Tax Credit for Certified Rehabilitation of Certified Historic Structures)
- Other Reference: Comptroller of Public Accounts, Insurance Tax Rule 3.830
    - Comptroller of Public Accounts, Franchise Tax Rule 3.598
    - Audit Franchise Tax Webpage – Historic Structure Rehabilitation

CHAPTER 10
RETALIATORY TAX

Introduction

Retaliatory taxes are assessed on licensed foreign or alien insurers when their state of incorporation assesses higher aggregate taxes, fees and assessments on the writing of insurance by Texas domiciled insurers than the State of Texas assesses on foreign insurers writing insurance in this state. The purpose of retaliatory taxes is to equalize taxation of insurers in Texas and other states when other states place an overall higher tax burden on Texas insurers than this state places on insurers from such other states. Further, such taxes are intended to encourage more equal treatment of insurers by other states, thereby allowing Texas domiciled insurers equal access to markets in other states.

Retaliatory taxes are determined and assessed on the basis of "what if" a Texas domiciled insurer was licensed and doing business in the other state and writing the same coverages as the foreign insurer is writing in this state. For purposes of comparing tax rates, "the basic" or highest rate of taxation is used for both states. A "similar type insurance company" is a company that is or may be licensed to write the same type of business, such as life, accident and health, property and casualty, or title insurance.

TIC, Section 281.005(5), excludes from the retaliatory tax computation an assessment for a special purpose, such as an assessment for a guaranty association, high risk health pool, joint underwriter association or windstorm association under the law of this or another state. Retaliatory taxes do not apply to Surplus & Excess Lines Insurance, Independently Procured Insurance, Third-Party Administrators, Registered Risk Retention Groups, Purchasing Groups and Health Maintenance Organizations.

All states except Hawaii have retaliatory tax statutes.

Audit Activities

Preliminary Activities

Review the National Association of Insurance Commissioners (NAIC) Retaliatory Guide for the state of incorporation.

For the retaliatory comparison, the insurer under audit is considered a foreign company in the state of incorporation. Therefore, determine if that state has a separate return for foreign insurers.

Request copies of all premium tax returns and miscellaneous tax returns (e.g., fire marshal tax, state income tax) as filed by the insurer.

Make note of any additional taxes, assessments and fees not shown on the home state's tax return. In addition, determine if the home state requires a franchise or income tax return in addition to or in place of the premium tax return.

Fees

Fees that can be recouped by the company are not included in the retaliatory tax computation. The key is whether the company has the right to recoup the cost. If the state of incorporation does not prohibit reimbursement, then the fees should not be included. For example, if the home state allows the agent fees paid by the insurer to be recouped from the agent, then the fees should not be included in Column II, State of Incorporation on the Retaliatory Worksheet, Form 25-200.

Similarly, the Motor Vehicle Crime Prevention Authority Assessment is recoupable. This fee should not be included on the Texas side of the Retaliatory Worksheet. The Volunteer Fire Department Assistance Fund Assessment may also be recouped directly from the policyholders or through rate filings made with the Texas Department of Insurance.

Compute the Premium Tax Base

Recalculate the home state taxes, assessments and fees that are premium based using Texas premiums. Use the Retaliatory Worksheet as a guide for this calculation.

Use the home state return instructions and the NAIC Retaliatory Guide to determine the correct tax base. For example, if a taxpayer sells annuities the auditor needs to check the NAIC Retaliation Guide to see if the state of incorporation taxes annuities. Texas does not tax annuities as premiums but does assess a maintenance tax on annuity considerations (annuitized amounts, or back-end reporting on the maintenance tax/fee return). In Texas the same premium amount must be used as the starting point on both sides of the comparison. Adjustments and deductions may be required for certain types of insurers or business written.

Determine the Correct Tax Rate

The tax rate on the Texas side of the Retaliatory Worksheet is fixed at the flat rate and is pre-printed on the form.

The tax rate for the home state is the basic tax rate. Certain states allow the basic rate to be indirectly reduced by allowing tax credits instead of a lower tax rate.

Other Considerations

Adjustments to Texas Maintenance Taxes

If the company is in a retaliatory tax position or paying retaliatory tax, any adjustment to Texas Maintenance Tax may be offset by an equal but opposite retaliatory tax adjustment.

For example, assume the taxpayer owes $2,000 for retaliatory tax. An audit adjustment is then made for an OPIC Assessment of $500. Once this adjustment is carried forward to the Retaliatory Worksheet, the audited retaliatory tax due is reduced to $1,500. The net change from the OPIC adjustment is zero.

If the additional maintenance tax due is greater than the retaliatory tax originally due, there may not be a direct offset., for example: $5,000.00 was originally due for retaliatory tax and an adjustment was made to maintenance tax for $20,000.00. In this case, the maintenance tax on the retaliatory return for the Texas side would increase by $20,000.00 which would result in a negative amount for the retaliatory tax due. On the retaliatory return, the directions state that if the amount drops below zero then the amount due is zero. In this case, there would be a credit of $5,000.00 for retaliatory tax and an assessment for $20,000.00 on maintenance tax which would net $15,000.00.

The audit plan should contain sufficient documentation to explain why adjustments were not made.

Title Company Premiums

The premium tax base can be calculated in one of two ways: the all-inclusive method or the risk method. The method used in a particular state depends on that state's statutes and regulations. Schedule T for title companies contains a column which indicates the particular method that is used in each state. Note that Texas is an all-inclusive state.

The all-inclusive method produces a larger premium tax base than the risk method. If the home state uses the risk method, obtain schedules from the taxpayer showing how the Texas premiums would be recalculated using the home state's statutes and regulations.

All title insurance companies licensed and operating in Texas report and pay premium and maintenance taxes on the all-inclusive basis. Since title agents in Texas retain a very large percent of the collected premium and are legally liable for premium taxes on the portion retained, the retained portion of the title premiums should be deducted from the Texas side on the Retaliatory Worksheet to show only the tax base the title insurer is subject to. As an example, title agents in Texas (by TDI rule) currently retain 85% of the collected premium. Chapter 223 provides for the insurance company to remit taxes on 100% of the premium and that the tax due on the agent’s portion is included in the company's portion of the premium. For purposes of completing the Retaliatory Worksheet, the premiums in the Texas column should be reduced by the amount kept by the agent for premium tax and maintenance tax purposes. If a title agent is not involved in placing a title insurance policy, such as with title insurance companies operating as a direct operation, there is no reduction in the amount of premium because there is no agent's portion of the premium.

Current Policy

Statutory References: TIC Chapter 281

CHAPTER 11
NEW YORK RETALIATORY TAX

Introduction

Calculating the Texas retaliatory tax for New York (NY) companies is quite complex and utilizes a series of calculations to arrive at the tax due. These amounts are computed on various schedules on the CT-33, the "Franchise Tax Return for Insurance Corporations" and on the CT-33-M, the "Metropolitan Transportation Business Tax Surcharge Return and Claim for Refund of MTB Surcharge Retaliatory Tax Credit." New York uses the following as the basis for the calculation:

1. Allocated Entire Net Income (Schedules B & F)
2. Allocated Business and Investment Capital (Schedule D)
3. Alternative Tax (separate manual computation/no schedule)
4. Minimum Tax of $250.00
5. Allocated Subsidiary Capital (Schedule C)
6. Insurance Premiums (Schedule H)
7. Tax Limitation at applicable tax rate of Taxable Premiums (Schedule H)
8. Surcharge (MTB surcharge from CT-33-M)

The actual tax computation is calculated by adding the **larger of** items 1, 2, 3 or 4 to the total of items 5 and 6. This total is then compared to the limitation amount in item 7. The tax is the **lower of** these two totals. Usually, the main focus of the work is on the allocated net income, though the other factors should be reviewed and calculated if necessary. An important point to consider is that there is a tax limitation on taxable premiums that cannot be exceeded.

In addition, there is currently one tax surcharge that applies – Metropolitan Transportation Business Tax Surcharge. The rate is 17% of tax due above, after allocation to the Metropolitan Commuter Transportation District (calculated on NY CT-33-M). Effective with the 2003 return, the wage component of the Metropolitan Business Tax Surcharge was eliminated for non-life companies. From 2003 forward, this factor is based solely on written premium.

Effective with the 2003 return, non-life companies are subject to a fixed rate of 1.75% for accident & health premiums and to a fixed rate of 2.00% for all other non-life premiums. The new form is entitled CT-33-NL.

Audit Activities

Request complete copies of the NY CT-33 return and the NY CT-33-M as filed, the NY state business page and the Federal 1120, along with the workpapers, for the taxpayer under audit. If the taxpayer filed as part of a consolidated group, request the Federal pro-forma return or the consolidating workpapers to the return.

Calculate the Texas retaliatory tax on a NY basis. This complex calculation involves the following eight steps:

1. Allocated Entire Net Income – a two-part calculation
    a. Part 1: Schedule F – "Computation and Allocation of Entire Net Income:"
        i. Using the 1120 requested, verify the starting point on the NY Schedule F is federal taxable income. Ascertain that the returns provided are copies of the **actual** filings with NY state and the federal government.
        ii. Other amounts shown on Schedule F can be verified using the 1120. There is one amount that can be reported in a variety of ways. The "NY State Franchise Tax deducted on federal return" is added back in the computation. This amount is usually based on an estimate or on 100% of the prior year's tax paid and generally can be verified using the taxpayer's federal workpapers. Alternative calculations, such as using the Schedule T premiums multiplied by the tax rate, plus the surcharge may be necessary. The auditor should discuss this or any alternative calculation with the taxpayer.
        iii. After these additions and subtractions are made from the **federal taxable income**, the **entire net income** can then be determined. The **entire net income** is then multiplied by the allocation percentage computed in the following section.
    b. Part 2: Schedule B – "Computation of Allocation Percentage:"
        i. These amounts are computed using the hypothetical Texas company's amounts. Substitute "Texas" for "New York" amounts on this schedule using the Texas state page. Instructions for the CT-33 are helpful in determining which amounts should be used to compute each of the lines shown. For instance, "Texas taxable premiums" and annuities are included in the computation net of dividends. Reinsurance assumed and ceded must be added and subtracted in the computation. Premiums that cannot be specifically assigned to any other state (orphan policies) are included in the computation. It may be necessary to estimate the Texas amount based on a ratio of Texas to NY premiums.
        ii. The auditor must next verify companywide **total premiums**. This should be the amount as filed on the NY state returns.
        iii. The Texas premium percentage is based upon the ratio of Texas to total company premiums. The percentage is weighted; multiplied by nine.

iv. The second percentage is a percentage of Texas wages to total company wages. It is added to the weighted premium percentage computed previously and that result is divided by 10.
v. The allocation percentage is then multiplied by the entire net income amount computed above to arrive at "Allocated Entire Net Income."
vi. The "Allocated Entire Net Income" is taxed at the applicable rate.
vii. A factor is disregarded if both the numerator and denominator are missing.

Note: It is helpful to follow the CT-33 return format to compute the Texas amounts. The instructions to this return also aid the auditor in preparation of the pro-forma Texas CT-33.

2. Computation and Allocation of Subsidiary Capital
    a. The computation of **subsidiary capital** is applicable when a taxpayer owns greater than 50% of the voting stock of a subsidiary. Generally, the reported amounts are balance sheet or Annual Statement items.
    b. The **issuer's allocation percentage** is a predetermined ratio available from the prior year's NY return. It is also available from NY State Department of Taxation & Finance if third-party verification is necessary.
    c. The allocation percentage is then applied to the "Computation and Allocation of Subsidiary Capital." The Allocated Subsidiary Capital is taxed at the applicable rate.

3. Computation and Allocation of Business and Investment Capital
    a. Verify that **subsidiary capital** shown on Schedule D, uses the reported **net average fair market value** amounts from NY Schedule C. Generally, the reported amounts are balance sheet or Annual Statement items.
    b. The allocation percentage is applied to the "Computation and Allocation of Business and Investment Capital."
    c. The Allocated Business and Investment Capital is taxed at the applicable rate.

4. Alternative Tax
    a. Start with the Texas Allocation of Entire Net Income previously calculated. This amount comes from Schedule F.
    b. Add officers and certain stockholders’ salaries from Schedule G to this amount.
    c. Subtract the allowable exclusion of $15,000.
    d. Multiply this sub-total by 30%.
    e. Multiply the result by the allocation percentage.
    f. The "Alternative Tax" is computed at the applicable rate.
    g. If the result is negative after combining the entire net income with officer & stockholder salaries, the "Alternative Tax" is zero.

5. Minimum Tax is fixed at $250

6. Insurance Premiums
   a. This amount is from Schedule H and can also be crosschecked with the Texas taxable premium amount previously calculated on Schedule B.
   b. Dividends deducted do not include cash paid on deferred dividends due policyholders on maturing policies and cash surrender values.

7. Tax Limitation
   a. This is the same amount used from the "Insurance Premiums" step in item 6.
   b. NY limits the total tax due to a percentage of total premiums as computed above. However, if a taxpayer derives more than 95% of premiums and other considerations from annuity contracts, ocean marine insurance or from group insurance for the elderly, these are included in the **tax limitation computation**. The total is multiplied by the applicable percentage to compute the limitation.
   c. Total tax due cannot exceed the limitation.

   Suggested Short Test: Perform the Tax Limitation calculation prior to the other tests. If the tax paid in Texas far exceeds the limitation amount for NY, it is unlikely retaliatory tax will be due. However, do not forget to consider the MTA surcharge.

8. Metropolitan Transportation Business Tax Surcharge
   a. The first step is to verify that the taxpayer filed the CT-33-M return. If the company did not file the CT-33-M, check the CT-33 for a disclaimer required of all insurers **not** filing the CT-33-M.
   b. If this return was filed, you must compute the MCTD allocation percentage and the MTA surcharge. Begin with the tax due prior to the state tax surcharge as calculated in steps 1 through 7 above.
   c. Compute the MCTD allocation percentage. Non-consolidated figures should be used reflecting NY business. This percentage reflects the premiums written on risks located in the MCTD area as well as wages paid to employees working within the MCTD compared to the total premiums written and wages paid. The premium percentage is heavily weighted.
   d. Apply the allocation percentage to the state tax due.
   e. Multiply the **allocated tax** by the applicable tax rate to obtain the **MTA surcharge**.

   Note: The logic used in this area is that almost every insurer doing business in NY State is likely doing business within the NY City metro area which includes the five NY City boroughs of Manhattan, Brooklyn, Queens, Bronx and Staten Island, along with Nassau, Suffolk, Westchester, Orange, Putnam and Rockland Counties. The assumption is that a hypothetical Texas company doing business in NY state would be doing its MCTD business in a similar ratio as the actual NY company under audit. However, although the Texas company is likely to have the same premium ratio within the MTA as the NY company, it is not likely to have the same wage ratio since the NY company may include headquarters' personnel that will not likely be part of the Texas company ratio.

Note: If the NY company's reported MTA ratio is based on something other than a business-related factor, it may be necessary to recalculate the NY ratio. The reported NY ratio must be analyzed for reasonableness. For example, a company may have used the number of counties or square miles in the MTA compared to the state total as a basis. Neither would be an acceptable starting point for the above calculation.

Other Considerations

- NY requires pre-payments on the Franchise Tax Returns. These are payments for the tax due in the next year, and not the year under examination. Do not confuse this with penalties or additional taxes. Verify amounts from NY form CT-5, which the taxpayer can provide.
- Obtain a copy of the NY CT-33 & CT-33-M instructions, which will be helpful in determining how to recalculate the Texas CT-33 & CT-33-M.
- Always obtain a copy of the NY CT-33 & CT-33-M as actually filed. Copies of returns as filed can be obtained from the NY State Department of Taxation and Finance. See the retaliatory guide for additional references.

Current Policy

References: NY Tax Code Sec. 1505, 1510, 1520

CHAPTER 12
MAINTENANCE TAXES

Property & Casualty

The maintenance tax return contains separate lines for various categories of premiums. The different lines of business are obtained from the Texas Page and are summarized by category according to the following chart:

Fire and Allied Lines

- Fire
- Allied Lines
- Earthquake
- Flood
- Farm owner's Multiple Peril
- Homeowner's Multiple Peril
- Commercial Multiple Peril (non-liability)
- Growing Crops
- Inland Marine

Casualty and Fidelity

- Commercial Multiple Peril (liability portion)
- Financial Guaranty
- Mortgage Guaranty
- Boiler and Machinery
- Medical Malpractice Liability
- Product Liability
- Other General Liability
- Fidelity
- Surety
- Glass
- Burglary & Theft
- Credit Guaranty

Accident and Health

- All Other Accident & Health
- Group Accident & Health
- Group Credit Accident & Health
- Other Credit Accident & Health
- Collectively Renewable A & H
- Non-cancelable Accident & Health
- Guaranteed renewable A & H
- Non-renewable for stated reasons
- Other Accident Only

Auto

- Private passenger Auto No-Fault
- Other Passenger Auto Liability
- Commercial Auto No-Fault
- Other Commercial Auto Liability
- Private Passenger – Physical Damage
- Commercial Auto – Physical Damage

Workers' Compensation

- Workers' Compensation

Unregulated Lines

Ocean marine insurance is exempt from rate administration under TIC Section 2252.001(c)(9). TDI has not set a rate for the collection of maintenance tax on aircraft premiums (TIC Chapter 256).

TDI considers the following lines to be Professional Liability Insurance predicated on TIC Section 2252.001(c)(3). These "Professional Liability" lines are not subject to form and rate regulation and therefore are not subject to maintenance taxes: Accountants Professional Liability, Allied Health Care Professional Liability, Architects & Engineers

Professional Liability, Chiropractic Professional Liability, Dental Professional Liability, Employment Practices Professional Liability, EMS Medical Attendants Professional Liability, Hospital Professional Liability, Insurance Agents Errors and Omissions Professional Liability, Lawyers' Professional Liability, Notary Public Errors & Omissions Professional Liability, Nurses Professional Liability, Nursing Home Professional Liability, Optometrist Professional Liability, Physicians & Surgeons Professional Liability, Podiatrists Professional Liability and Veterinarian Professional Liability.

Federal Flood Insurance is taxable for premium taxes (Tax Type 71), as FEMA has waived its sovereign immunity with respect to paying state premium taxes. Since maintenance taxes do not meet the definition of premium taxes, Federal Flood Insurance is not taxable for maintenance tax purposes (Tax Type 72).

Subtract the deductible dividends shown on the Texas Page from the gross premium amounts. Compare the category totals to the reported amounts on the maintenance tax return.

A company that writes any combination of life, accident and health insurance or annuity business may net premiums/annuity considerations between these lines of business if one or more contains negative premiums or negative considerations. Any resulting negative amounts for either are to be reported as zero.

A company that writes property and casualty coverage and/or accident and health coverage **may not** offset the negative premiums in one category of property and casualty against another category of property and casualty or against accident and health premiums. Negative premiums on any line item are to be reported as zero.

Statutory References: TIC Chapters 252, 253 and 254

Other Issues/Workers' Compensation Deductible Credits

If a policyholder selects a policy with a workers' compensation deductible option, the deductible credit amount must be added back to the tax base for maintenance tax reporting purposes.

Determine if the taxpayer writes workers' compensation policies with deductible credits. If so, the deductible credit amounts should be obtained from the taxpayer and added to the workers' compensation premiums shown on the Texas Page. This total should equal the reported base for maintenance tax purposes. The best way to determine if the company reports deductible credits is to compare the amount reported on the maintenance tax return with the amount reported on the Texas State Page. If the amount is the same, then they have not included any deductible credits for maintenance tax. If the amount is more on the maintenance tax return, then they did include deductible credits.

Insurers writing workers’ compensation insurance are required to compute the estimated annual premium using the National Council on Compensation Insurance (NCCI) Basic Manual with Texas exceptions, adopted by Commissioner’s Order No.

3142 dated, March 21, 2014. The Order also specifies an expiration date of October 1, 2015, for the rules, classifications, endorsements and forms in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Texas Basic Manual). Insurers are required to compute the estimated policy cost in accordance with the Texas Basic Manual, as applicable.

The method for determining the Workers' Compensation Premium (Total Estimated Policy Cost) with a deductible credit option is prescribed in the Workers' Compensation and Employer's Liability Manual and is available online from TDI's website.

Note: All workers' compensation policies are subject to a final payroll audit that reflects the actual payroll, and the actual premium developed on the policy in comparison to the estimated payrolls and the estimated premium and estimated policy cost calculated at the time the policy is issued.

These formulas must be strictly adhered to because missteps may affect deductible credits that are added back to the Texas Page workers' compensation premiums for maintenance tax purposes, as well as other taxable premiums.

Statutory References: TIC Chapter 255 and Texas Labor Code, Sections 403.003, 405.003, 407A.301 and 407A.302.

Life/Accident & Health

The maintenance tax return contains separate lines for accident & health premiums and life & annuity premiums.

The maintenance tax base for accident & health is Texas premiums as shown on Schedule T, less all non-taxable accident & health premiums reported on the Computation of Non-Taxable Premiums, Form 25-205.

The maintenance tax base for life premiums is Texas premiums as shown on Schedule T, less all non-taxable life premiums reported on the Computation of Non-Taxable Premiums, Form 25-205.

In 2001, NAIC revised the Annual Statement, Schedule T reporting requirements for annuities as a result of Statements on Statutory Accounting Practices (SSAP) 50, 51 and 52. The maintenance tax base for annuities has not changed. The changes on Schedule T mean that a column total from Schedule T can no longer be used to accurately report maintenance tax for annuities. Taxable annuities are the amounts that have annuitized or that have been paid out to the annuitant, generally referred to as "back-end" reporting of annuities. This amount will usually be less than the total shown as annuity considerations, currently in Column 3 of Schedule T. There could be taxable annuity amounts in other columns of the annual statement regardless of the application of morbidity or mortality rates to the amounts. Deposit type accounts are not subject to maintenance tax. The auditor needs to obtain information from the taxpayer to verify the taxable portion in each column.

Prior to this change, taxable annuities were generally the Texas amounts shown on Schedule T, Column 4. Other deposit type funds were not taxable.

- Statutory Reference: TIC Chapter 257
- Other References: Annuities: STARS accession number 9507047L and 200301708L

Health Maintenance Organizations (HMO)

TIC Chapter 258 states that the per capita maintenance tax is imposed on each authorized health maintenance organization with gross revenues subject to taxation under TIC Section 258.004. The calculation requires a quarterly average of enrollees as they relate to taxable gross revenues. The term "enrollee" means all individuals covered by the HMO plan, including the primary enrollee and all covered dependents. For example, if there is one primary enrollee with three covered dependents, there are four enrollees for maintenance tax purposes.

The auditor may calculate the quarterly average of enrollees using the quarterly information found in the Exhibit of Premiums, Enrollment and Utilization in the Annual Statement. If information is not available, alternate calculations, sources and verification may be required.

Enrollees for whom revenues were reported on the Computation of Non-Taxable Premiums, Form 25-205, are not subject to maintenance tax. Those enrollees must be subtracted from the totals before computing the average enrollees.

There are three HMO maintenance tax categories:

1. Single health care service: an HMO providing preventative or curative services directed at an injury or illness of a single specified nature, i.e., dental or vision care.
2. Basic health care service: an HMO providing preventative or curative services directed at the general health of the individual covered.
3. Limited health care service: an HMO providing preventative or curative services directed at chemical dependency/mental health and long-term care.

Statutory Reference: TIC Chapter 258

Title

The amount subject to the maintenance fee is total received premiums for Texas as shown on the Schedule T of the Annual Statement. The title insurer is responsible for remitting the maintenance fee due on the title agent’s portion of the premium.

Statutory Reference: TIC Chapter 271

Domestic Surplus Lines Insurers

In 2017 this entity type was added by House Bill 2492, 85th Legislature, effective January 1, 2018. Property and casualty insurance companies can apply to be designated as a “Domestic Surplus Lines Insurer.” Foreign surplus lines insurers (ones not based in Texas) can apply to be redomesticated to Texas if certain requirements are met. This group of insurers will not be licensed to participate in the admitted market. The premium for a surplus lines policy written by these insurers is subject to premium tax under TIC Chapter 225 and to all applicable maintenance taxes as if the entity was an authorized insurer.

Statutory Reference: TIC Chapter 981, Subchapter B-1

Other Considerations

Premiums received from the Federal Employees Health Benefits Program (FEHBP) are preempted from taxes or fees by § 8909, Title 5, United States Code. The definition of taxable premiums includes payments of state and federal funds from the state treasury for Medicaid and Chip coverage. These premiums are subject to premium and maintenance taxes as of September 1, 2003. Exemptions and preemptions that are allowed for premium tax purposes are also allowed for maintenance tax purposes.

In 2017 Sec. 252.005 was amended by the 85th Legislature to exempt all farm mutual insurance companies authorized under Chapter 911 from maintenance tax unless they are considered a “fronting insurer” as defined in TIC Section 221.001(c). Premiums written by a farm mutual insurance company meeting the criteria of a “fronting insurer” are subject to maintenance tax.

Non-Profit Legal Services Corporations are no longer required to report maintenance taxes effective September 1, 2019, due to the passage of Senate Bill 1623 by the 86th Legislature.

Generally, if any adjustments are made to reported premiums (e.g., allocation errors) the maintenance tax base also changes. This does not apply to HMOs.

CHAPTER 13 THIRD-PARTY ADMINISTRATION FEES

Introduction

An administrator collects premiums or contributions from or adjusts or settles claims in connection with property and casualty, workers' compensation, life, health and accident benefits or annuities for residents of this state. Administrators receive compensation for administering the plans of other entities.

Third party administrators (TPAs) must be licensed by the TDI. Licensed insurers may also be licensed TPAs. The XISUMM inquiry for Tax Type 72 shows an indicator (30 or 31) for "additional lines," if a licensed company is also a licensed TPA.

Audit Activities

Premium Reconciliation

While conducting the premium reconciliation for an insurer, investigate any income accounts that are not reported as taxable premium accounts and inquire about TPA fees that might be collected for administering health plans. Determine if these accounts represent TPA fees by asking the appropriate personnel how the insurance company participates in this type of business. If a taxpayer is not licensed as a TPA, but is acting as a TPA, any additional fees would be subject to maintenance tax only. This is a regulatory violation, and the taxpayer should be instructed to contact the TPA licensing area of the TDI to obtain a license. If a taxpayer is unable to prove that the amounts in question have been received from TPA activities, an audit adjustment should be made.

Non-Taxable Fees

Persons not subject to being licensed as an administrator are listed in TIC Chapter 259.

Fees collected for administering ERISA plans are not subject to tax. However, the auditor should request a copy of the executed agreement between the plan sponsor and the TPA for all non-church and non-government plans. This agreement is sufficient documentation to prove that a plan is in place and is therefore ERISA governed.

Effective June 2017, the 85th Legislature created a Temporary Health Insurance Risk Pool. The program is not subject to any state tax, regulatory fee or surcharge, including a premium or maintenance tax or fee. The chapter creating the risk pool expired August 31, 2023, due to an extension granted in the 87th Legislature.

A TPA might be responsible for collecting and remitting sales tax on taxable insurance services. The auditor should inquire into sales tax activities and proceed with an audit lead if necessary. Examine the Annual Statement for information on the names of the companies performing insurance services.

Current Policy

Statutory Reference:

- TIC Chapter 259
- TIC Chapter 4151
- TIC Chapter 1510

Rule: Sales Tax Rule 3.355

CHAPTER 14
OPIC ASSESSMENT

Introduction

For the listed types of coverage, the OPIC (Office of Public Insurance Counsel) Assessment is based on the following:

- Property & Casualty: The assessment is based on the total number of policies in force in Texas at the end of the calendar year.
- Life/Accident & Health: The assessment is based on the total number of new Texas individual policies and/or new Texas certificates of coverage under a group policy written for delivery and placed in force with the initial premium paid in full during the calendar year.
- Health Maintenance Organizations (HMO): The assessment is based on the total number of new Texas individual policies and/or new Texas certificates of coverage under a group policy written for delivery and placed in force with the initial premium paid in full during the calendar year.
- Title: The assessment is based on the total number of owner policies and/or mortgagee policies written during the calendar year on property located in Texas for which the full basic premium was charged. For example, the reduced premium on a mortgagee policy is the full basic premium for that type of policy and should be included in the OPIC computation.

Other Considerations

There are no statutory exemptions for OPIC assessments under TIC Chapter 501 (formerly Article 1.35B). However, the comptroller recognizes an OPIC exemption for policies and certificates issued to policyholders for which premium is exempt as shown on the Computation of Non-Taxable Insurance Premiums, Form 25-205. Texas Annual Insurance Maintenance, Assessment and Retaliatory Report Instructions, Form 25-300, specifically exclude from this assessment policies and certificates issued under Chapters 1551, 1575, 1576, 1579 and 1601.

Premiums received from the Federal Employees Health Benefits Program (FEHBP) are preempted from taxes or fees by § 8909, Title 5, United States Code. This preemption applies to the OPIC assessment. Coverage paid from the United States Treasury or the State of Texas Treasury for the purpose of providing welfare benefits such as Medicare, Medicaid and the Children's Health Insurance Program is subject to the OPIC assessment.

The OPIC assessment applies to Medicare policies and certificates of coverage issued. Refer to STAR accession number 200012935L.

Source Documents

Generally, there is no exhibit or schedule in the Annual Statement that lists the number of policies and/or certificates subject to the assessment. This information must be obtained from the taxpayer. For individual life policies issued, some taxpayers use the Policy Exhibit of the Texas Page.

Current Policy

Statutory Reference: TIC Chapter 501

CHAPTER 15
SURPLUS LINES AGENTS

Introduction

A Surplus Lines Agent or Agency is defined as an agent or agency that holds a surplus lines license issued by TDI under TIC, Chapter 981. The agent of record is the Texas licensed surplus lines agent who places a policy with an eligible surplus lines insurer, or the Texas licensed surplus lines agent who transacts business directly with an out-of-state agent not licensed by Texas as a surplus lines agent to obtain coverage with an eligible surplus lines insurer.

House Bill 3410, 82nd Legislature, 2011, modified the definition of “agent of record” to exclude a managing underwriter. Refer to the managing underwriter requirements in TIC Section 981.223. From January 1, 2012, through December 31, 2013, an agent that placed business with a managing underwriter was responsible for reporting the policy to the stamping office and remitting the tax to the Comptroller’s office.

In 2013, the 83rd Legislature passed House Bill 1405, effective January 1, 2014, requiring the managing underwriter to report the policy to the Stamping Office and pay the taxes to the Comptroller’s office as the agent of record, unless a written agreement is entered into at or prior to binding coverage for one or more policies.

Surplus lines agents are responsible for collecting and remitting the taxes due on premiums, assessments, dues, membership fees and any other consideration for insurance for policies that are placed within the surplus lines market. Taxes are remitted to this agency on Form 25-104. The Comptroller requires the agents to prepay such taxes by the 15th of the month following the accrual of $70,000 or more in premium taxes. Prepayment amounts must equal the liability at the end of the month in which the agent accrues $70,000 in tax. Prepayments are remitted on Form 25-105. Agents have an option to report and pay premium taxes on a premium-received or premium-written basis, and the method chosen must be the same method chosen by the agent to report the taxes due.

House Bill 2492, 85th Legislature, 2017, provided for the licensing of domestic surplus lines insurers. This type of entity may not write business in the admitted market. The premium for a surplus lines policy written by a domestic surplus lines insurer is subject to tax under TIC Chapter 225 and that tax continues to be collected and remitted by the Texas licensed surplus lines agent. However, these insurers are subject to all applicable maintenance taxes. Please refer to Chapter 12 – Maintenance Taxes and Sec. 981, Subchapter B-1 of the TIC for additional information.

The Surplus Lines Stamping Office of Texas (SLSOT) is a quasi-governmental non-profit association that reports to the Insurance Commissioner. Chapter 981 enumerates the activities of the SLSOT. Within 60 days of the issuance date or the effective date of a policy, whichever is later, the agent must file copies of all policy-related documents with the SLSOT.

Policy documents are submitted to the SLSOT primarily electronically and are summarized on a monthly detail report. The premium tax and other relevant information are shown on this form. The SLSOT acknowledges receipt of the information by transmitting a "batch edit" to the agent within a few days of processing. The batch edit is a computer-generated listing of all items processed in the batch. If problems are found with any item, it is "tagged" and returned to the agent for further research.

The SLSOT generates monthly and annual activity reports. The annual activity report specifically states that the agents cannot rely on the report for purposes of reporting or paying taxes due to the State.

Audit Activities

The auditor's function is to determine that all premiums are reported, and the agent of record remits all taxes to the Comptroller. The audit procedures used depend upon the types of records maintained by the agent.

According to 28 TAC Section 15.108 every surplus lines agent is required to maintain the following records:

1. a policy register;
2. a contract file;
3. general books of account; and
4. such other insurance and accounting records as are necessary to properly and promptly service policyholders in this state and provide required information to the department.

A general ledger, a general journal, cash records and any other items necessary to reflect the financial solvency of the agent are required to be maintained per 28 TAC Section 15.113. Both month-end and fiscal or calendar year-to-date summary of operations are to be maintained in accordance with generally accepted accounting principles.

Audit procedures include but are not limited to the following:

- Run database reports on SLSOT data showing all activity reported by the agent under audit.
- Reconcile from the database reports to the reported fee system data. Note differences for later reconciliation. If the agent or agency has reported using the SLSOT amounts, then audit adjustments will most likely be required since neither the written nor received method would match this total.
- Determine the eligible surplus lines insurers doing business through the agent. Currently a list of eligible insurers can be found at the SLSOT's website. After passage of the Nonadmitted and Reinsurance Reform Act (NRRA), agents no longer are required to exclusively use the TDI's list of eligible insurers and so agents may also use the NAIC's IID (International Insurance Department) Quarterly Lists showing other non-admitted insurers that may be used to write surplus lines business.

- Request premium data files for each year that will be used to confirm the reporting method chosen and/or to compute the audited taxable premium. The population of the data files should be tied to the general ledger for internal control purposes. However, auditors have often found that because the agent's income is commission driven and premiums are not booked as income, it can be difficult to reconcile to any internal records.
- Determine if the agent files electronically with the SLSOT. If so, examine the system used for transmitting the data and determine whether it's online real-time (done through the internet with web entry) or whether the information is simply compiled and transmitted at regular intervals.
- Determine whether the agent reports on a premium-written or a premium-received basis and confirm that the reporting basis is consistent with the election filed. Explain the definition of each method:
    - the premium written method should reflect the use of an effective date for the new or renewing policy while other policy changes are based on when the change is made and
    - the premium received basis reflects when the policy premium is received by the agent or agency.
- Confirm allocation of premiums. Determine if the agent reports 100% of the Texas premium to the Comptroller when Texas is the home state of the insured, or if allocations are made regarding any non-Texas risks on multi-state policies. The NRRA requires the allocation of premiums based on the "home state" of the insured, which is the principal residence of the individual or principal place of business of the company. If Texas is the home state of the insured on a multi-state policy, Texas receives 100% of the tax on the premium, even if only a small amount of the premium is attributable to risks in Texas. Conversely, if Texas is the home state of the insured, but the policy does not cover any risk in Texas, then the state with the highest premium becomes the home state for that placement. If Texas is the home state of the insured and there is any coverage attributable to Texas, then Texas receives 100% of the tax on the premium.
- Verify non-taxable premiums. Federal preemptions exist for the Federal Deposit Insurance Corporation (F.D.I.C.), National Credit Union Administration (N.C.U.A.) and federally chartered credit unions. Other statutory exemptions include premiums for risks or exposures properly allocated to federal waters, international waters or those under the jurisdiction of a foreign government. The federal, international waters and under the jurisdiction of a foreign government exemption may require an allocation if there is also some Texas risk. Effective January 1, 2014, an exemption was added by the 83rd Legislature, 2013, exempting ocean marine risk coverage premiums for stored or in-transit baled cotton for export.
- Determine how policyholders are billed, if invoices are generated and if so, how they are filed. Reconcile from invoices to the policy registers for several selected periods in order to test the reliability of internal controls.
- Verify that all amounts charged to the policyholder were reported as taxable premiums whether charged by the retail agent or the agent of record.

Membership fees, policy fees, dues or any other consideration for insurance are taxable. Separately stated and billed finance charges are not taxable.
- Determine how premium and tax amounts are compiled for reporting.
- Trace tax collected/billed through the accounting system and perform tests to ensure that all tax has been accounted for and remitted.
- Ensure that tax due on any endorsements or the tax due on other changes in premium have been accounted for and remitted.
- Reconcile the information in the agent's records as described in 28 TAC Section 15.108 and 15.113 to the reported data.
- Reconcile from policy registers to reported data.
- Use contract files to trace information from the detailed records to the summary records. These files contain any endorsements or other changes to policies.
- Using the audited premiums for each year, enter the audited premiums into the prepayment penalty and interest spreadsheet. All payments made throughout the year should be entered as well to determine whether any prepayment penalty and interest is due. The same criteria that apply to waiver of audit penalty and interest also apply to waiver of prepayment penalty and interest.
- If the agent or agency has reported using the SLSOT amounts, then the auditor must add back those premiums that have effective dates prior to the first year of the audit. Otherwise, these premiums would not be picked up for audit purposes. Likewise, the auditor should examine the SLSOT data for the year after the last year under audit to determine if any of those policies that contain a current year effective date should be brought back into that last year.

HB 3410 amended TIC Section 981.002 (1-a) by defining a managing underwriter as a surplus lines agent or agency that exercises, pursuant to a written agreement with an eligible surplus lines insurer, underwriting authority for the eligible surplus lines insurer and that derives the agent or agency ’s business from a surplus lines agent. For tax years 2012 and 2013, the bill also required the surplus lines agent who placed a policy with a managing underwriter to collect the surplus lines taxes from the insured and remit the tax to the comptroller. This represented a change from the prior definition of “agent of record” as the agent closest to the insurer in the placement of a policy. The bill required retail agents who might not have otherwise had a reason to hold a surplus lines license, to become licensed and start reporting tax in this situation.

Effective January 1, 2014, HB 3410 was essentially reversed by passage of House Bill 1405. As a result, the managing underwriter must report the policy to the Stamping Office and the tax to the Comptroller’s office. However, a surplus lines agent and a managing underwriter may enter into an agreement to provide that the surplus lines agent is responsible for filing, reporting, collection, payment and all other requirements imposed by Chapters 225 and 981, including the requirement to pay the tax and file the tax report imposed. An agreement under this subsection must be in writing and must be entered into at or before the time coverage is bound under the policy. The agreement may apply to multiple policies or all policies between a surplus lines agent and a managing underwriter.

TIC Chapter 981was amended in 2013 by adding Section 981.223 to read as follows, effective January 1, 2014:

TIC Section 981.223 (a)addresses what records and documentation are required when the Managing Underwriter reports the taxes and policies to the SLSOT.

(a) A managing underwriter with whom an insurance policy is placed in the manner described by TIC Section 225.006(b) shall maintain appropriate records and make the records available for inspection by the department and the comptroller, including records of:
   (1) the name and address of the insured;
   (2) the policy number and policy period;
   (3) the name of the eligible surplus lines insurer;
   (4) the gross premium charged for the insurance;
   (5) the name of the surplus lines agent who placed the policy with the managing underwriter;
   (6) the license number of the surplus lines agent who placed the policy with the managing underwriter; and
   (7) documentation that the managing underwriter has transmitted to the surplus lines agent written confirmation of the agent's written agreement to act as the agent for the placement of the policy and be responsible for all filing, reporting, collection and payment requirements imposed by this chapter and by Chapter 225.

(b) A managing underwriter who acts as a surplus lines agent for a policy issued by an eligible surplus lines insurer shall maintain appropriate records and make the records available for inspection by the department and the comptroller, including the information listed in Subdivisions (a)(1) through (6). The records must reflect the name and license number of the managing underwriter as the surplus lines agent placing the policy.

(c) A managing underwriter may hold both a surplus lines agent license and a managing general agent license.

Tax Basis

The tax rate is 4.85% and is applied to, but not limited to the following charges:

- all premiums,
- membership fees,
- registration fees,
- assessments,
- dues,
- policy fees,
- agent fees that are charged in addition to, or in lieu of, a commission,
- any other consideration for insurance.

Current Policy

Statutory Reference:

- TIC Title 3. Department Fund, Fees and Taxes Subtitle B. Insurance Premium Taxes Chapter 225. Surplus Lines Insurance Premium Tax
- TIC Chapter 981

Reference:

- Title 34 TAC, Rule 3.822
- Title 28 TAC, Part 1, Chapter 15
- Title 34 TAC, Part 1, Chapter 3, Subchapter GG

CHAPTER 16
UNAUTHORIZED INSURANCE

Introduction

TIC Section 101.001(b)states, "[i]t is the policy of this state to protect residents against acts by a person or insurer who is not authorized to do business in this state." TIC Section 101.051 details conduct that constitutes the business of insurance. TIC Section 101.102 prohibits any act that constitutes the business of insurance except as authorized by statute. TIC Section 226.005(c) (Tax Payment; Due Date).

TDI maintains a website that contains information on companies that are eligible to transact insurance business in Texas.

Audit Activities

Determine if the taxpayer is listed on the TDI's list of surplus lines insurers or on the list published by the NAIC.

Verify if taxpayer is set up for other types of insurance in Texas. Run the MTSUMM inquiry to view the taxes and fees the taxpayer is currently responsible for reporting. The surplus lines insurer will not be set up on the fee system as a licensed insurer. The auditor may have to perform account maintenance to set up the tax responsibility before an audit assignment can be generated. The company type is "97" for unauthorized insurance.

Request that the taxpayer provide a report showing all Texas surplus lines business in detail on an annual basis. Ideally, the taxpayer will provide this report on CD or DVD. The following details should be requested:

- broker/agent name & address,
- insured name & address,
- policy number,
- policy effective date,
- premium amount,
- location of risk.

Reconcile the premiums from the taxpayer's report to the Texas premiums on Schedule T. The taxpayer should explain material differences between these two amounts.

Reconcile Schedule T premiums to the taxpayer's general ledger. Request copies of the taxpayer's Federal Return to further verify total premiums. These procedures may not be feasible unless onsite fieldwork is conducted. The auditor is required to document procedures not performed in the audit plan.

Run a database report of all surplus lines policies reported to the SLSOT by the surplus lines agents for the insurer under audit. The report can be run by effective date or by batch date. The effective date in the Stamping Office database corresponds to the effective date of the policy. The batch date indicates when the policy was reported to the Stamping Office. This report should be run with subtotals by year and by agent. Use the insurer's name exactly as it appears in the Listing of Insurers maintained in the audit office.

Transactions placed with licensed Texas surplus lines agents are not taxable to the Surplus Lines Insurer. Analyze the taxpayer's report and identify the licensed agents. Determine if the agent was licensed at the effective date of the policy. Transactions eliminated from the insurer's audit as a result of this procedure must be accumulated by the auditor and maintained in the audit office for reference on audits of surplus lines agents.

Cross-reference the taxpayer's report against the Stamping Office database report. Verify and compare the information on the policies written by the unlicensed brokers back to the Stamping Office database report to determine if a licensed agent ultimately reported the policy. Significant variances in premium amounts need an explanation. Transactions eliminated from the insurer's audit as a result of this procedure must be accumulated by the auditor and maintained in the audit office for reference on audits of surplus lines agents.

In some instances, the insured may have self-reported this as Independently Procured (IP). The auditor should also ask for this documentation. Properly documented IP transactions are not assessed in the audit of the insurer. Refer to the chapter on Independently Procured insurance.

Transactions that have not been placed with a licensed Texas surplus lines agent or reported to the SLSOT or do not meet the criteria for independently procured insurance should be scheduled as audit adjustments in the audit of the surplus lines insurer. These premiums are considered **Unauthorized Insurance**.

Problem Areas

Problems occur when tracing policies if the policy numbers on the insurer's report differ from those reported to the Stamping Office. Some agents report "bundled" or "packaged" blocks of business from large customers such as banks or mortgage brokers, especially when volume of business is large.

Be aware of credits reflected on the Stamping Office database report, but not on the insurer's report. These may be the result of timing differences with amended or canceled policies. Differences may indicate that the agent/broker is claiming a premium allocation for the non-Texas portion of the risk. Material differences should be analyzed and supporting documentation obtained. Audit adjustments may be necessary if sufficient documentation is not provided.

On individual policies, there may be material differences between amounts on the surplus lines insurer's report and amounts on the Stamping Office database report. If the taxpayer is claiming an allocation of premium among states, supporting documentation must be provided. Acceptable documentation includes policy applications, contracts, underwriting inspection reports and risk survey reports. Audit adjustments may be necessary if sufficient documentation is not provided.

The insurer could be recording the premium to the state where the agent's office is located rather than to the state where the risk is located. Errors in premium allocations should be analyzed and audit adjustments may be necessary.

Unlicensed Agents/Brokers

Often the immediate agent of record on the insurer's report may not be licensed in Texas. The risk may have passed through a series of agents before a licensed Texas agent reported the policy to the Stamping Office. If the trail ultimately does not lead to a licensed Texas agent, then the transaction is considered **Unauthorized Insurance**, and tax is assessed against the insurer. The fact that there is a licensed Texas agent in the chain after the initial policy placement by the insurer is relevant only if this licensed Texas agent reports the policy to the Stamping Office. The insurer must provide sufficient documentation to verify proper reporting.

Unauthorized Insurance

Insurance not placed through the admitted market or a licensed Texas surplus lines agent or that does not meet the criteria of independently procured insurance is considered "unauthorized insurance." The premium tax is assessed against the insurer, but if the insurer does not pay when due it can also be assessed against an agent involved in the transaction, and/or the insured. Most often, these audit adjustments are seen in audits of insurers not licensed in Texas but writing business on Texas risks.

Hearing No. 37,015 addresses the burden of proof which is placed upon the Comptroller when auditing surplus lines insurers. The Comptroller meets its initial burden of proof when the auditor excludes from taxable premiums those premiums derived from business placed through licensed Texas surplus lines agents. Transactions shown to have been independently procured on which tax was reported and remitted to the state should also be excluded from taxable premiums.

The auditor must research all policies that are in question to determine if any licensed Texas surplus lines agent has reported the policies to the Stamping Office. Policies reported to the SLSOT should be excluded from taxable premiums, regardless of which agent reported them. Any remaining policies are considered **Unauthorized Insurance** and should be scheduled as adjustments in the audit of the insurer.

The auditor also must research exceptions to determine if the insured is reporting independently procured premiums. The auditor should run applicable inquiries to determine whether an independently procured audit has been performed on the insured. If so, then the auditor can examine the audit schedules to determine if the policy in question was scheduled in the insured's audit. These policies should not be taxed again in the surplus lines insurer's audit.

The audit activities outlined earlier in this chapter meet the initial burden of proof required by the hearing.

See the chapter on Independently Procured Insurance for a list of the qualifying criteria.

Non-admitted Captive Insurers

A non-admitted captive insurer avoids regulatory sanctions by TDI based on a “carve out” in the statute, specifically at TIC Section101.053(b)(6). This section of the code allows single parent captive insurers who insure the risks of the company’s parent and affiliated companies only to operate legally in Texas. However, that section only protects the non-admitted captive from regulation by TDI. The non-admitted captive's premiums are still subject to the unauthorized insurance tax. Refer to TAC Rule §3.835 for additional information.

Tax Basis

Rate

The tax rate is 4.85% and is applied to:

- all premiums,
- membership fees,
- assessments,
- dues,
- any other consideration for insurance.

Applicability

- All risks located in Texas.
- All premiums written, procured or received in Texas on a subject resident, located or to be performed in this state.

Exceptions

- Risks properly allocated or apportioned and reported as taxable in other states or countries
- Risks properly allocated to federal or international waters
- Risks under the jurisdiction of a foreign government
- The FDIC (Federal Deposit Insurance Corporation) when they are the receiver of a failed financial institution holding the property being insured
- The NCUA (National Credit Union Administration)
- A federally chartered credit union

Other Considerations

Penalty and Interest Waiver

Due to the nature of unauthorized tax, penalty is rarely waived. As with all audits, the auditor should evaluate all the criteria.

Statute of Limitation

If the decision is made to audit a seven-year period, then additional penalties and varying rates of interest may apply. Hearing No. 37,015 includes detailed information about the statute of limitation.

Current Policy

Statutory Reference: TIC Chapter 226

CHAPTER 17
INDEPENDENTLY PROCURED INSURANCE

Introduction

Independently procured (IP) insurance is insurance procured directly by an insured from a non-admitted insurer. A broker or agent must not be involved with the placement.

Under the Nonadmitted and Reinsurance Reform Act (NRRA), only the home state of the insured is entitled to the premium tax due on independently procured premiums.

Audit Activities

Exempt Premiums

Premiums for risks or exposure in federal or international waters, or under the jurisdiction of a foreign government are exempt from taxation.

Inquiries

In the event a transaction is claimed as independently procured insurance, the auditor can determine if the tax was reported and paid via system inquiry. This information is set up under the **insured's** name and taxpayer number.

- XISUMM / Tax Type 71: This inquiry displays Company Type 99 Independently Procured.
- XIDATA / Tax Type 71: This inquiry displays premiums and tax on independently procured insurance. The inquiry shows one lump sum premium total. This total may include premiums from various policies written by different insurers.

Determine whether the insured correctly reported the independently procured tax.

Allocations

The NRRA requires the allocation of premiums based on the "home state" of the insured, which is the principal residence of the individual or principal place of business of the company. If Texas is the home state of the insured on a multi-state policy, Texas receives 100% of the tax on the premium, even if only a small amount of the premium is attributable to risks in Texas. Conversely, if Texas is the home state of the insured, but the policy does not cover any risk in Texas, then the state with the highest premium becomes the home state for that placement. If Texas is the home state of the insured and there is any coverage attributable to Texas, then Texas receives 100% of the tax on the premium.

Reporting

The **insured** or any person designated by the insured is responsible for reporting and paying tax on independently procured insurance.

Tax Rate and Basis

4.85% of Gross Premiums

The tax on premiums for a policy in excess of one year, with a fixed premium payable annually, is computed as of the date the premium becomes due and payable. For taxation purposes, this date is the policy anniversary date.

Due Date

The report and payment are due once a year, on or before May 15, following the calendar year in which the insurance was procured, continued or renewed.

Other Considerations

In order to avoid double taxation, the auditor should run the applicable inquiries to determine whether an audit of each insurer has been performed. These policies should not be assessed against the insured if they were included in the audit of the insurance company.

Current Policy

Statutory Reference: TIC Chapter 226, Subchapter B

CHAPTER 18
AUDIT WRITE-UP

General Information

Audit Periods

The beginning and ending periods must be the same on all forms in the audit package. Use the format below. The calendar basis should be spelled out; for example, January 1, 20xx through December 31, 20xx.

Form	Period
P&I Worksheet	Calendar basis (spelled out)
Cover Letter and Audit Report	Calendar basis (spelled out)
Audit Adjustment Reports	YYYY
Notification of Sampling Procedures	Calendar basis (spelled out)
Statute Waiver	Report period: 20XX return due March 1, 20XX Extended to: Calendar date (spelled out)
Audit Plan	YYYY

CATS

Complete all applicable write up screens in CATS. The assignments must be synched before audit finalization and final routing to your supervisor.

Add a “Notes to Reviewer” comment to list valid open collection records. Include consultants with valid power of attorney or letters of authority as contacts. Include cc recipient as a purpose in the contact screen for valid courtesy copy recipients.

Penalty and Interest Waiver

Separate Penalty and Interest Waiver Worksheets should be completed for each tax type. However, only one worksheet is required for surplus lines agents and agencies. The audit penalty and interest should be separated from the prepayment penalty and interest in item 6. The worksheets must include:

- The auditor, supervisor and manager signatures,
- The recommendation for denial or waiver,
- Specific reasons for the recommendation, assuring that the reasons support the recommendation (waiver or denial), using the facts of the situation and the appropriate criteria. A statement that the taxpayer "meets the criteria" is not sufficient,
- Use complete sentences – one sentence usually does not provide enough information for making a decision, and
- IARC conferences should be noted in the comments section when applicable.

Calculation of Error Percentage

Currently, the error percentage is calculated by dividing the audit assessment (tax due) by the total tax reported plus the audit assessment (tax due plus reported tax). The calculations are automatically computed in the Penalty and Interest Waiver Worksheet.

Penalty Waiver Over $50,000
For audits where audit penalty exceeds $50,000, the completed Penalty and Interest Waiver Worksheet and Audit Adjustment Report, manually uploaded by RPC prior to the conclusion of the audit, should be emailed to the auditor's supervisor/manager for approval.

On Surplus Line Audits where prepayment penalty and interest exceeds $25,000 (based on current Audit Headquarters requirements), the completed Prepayment Penalty and Interest Worksheet must be included in the request and forwarded to the supervisor/manager and Audit Headquarters for approval. Prepayments of surplus lines taxes are required under TIC Section. 225.009. Prepayment of Tax.

Cover Letter

Use the Word template "Form – General Audit Cover Letter" (Audit folder).

The tax type should be "71" or "72" if there are adjustments to either, but not both tax types. A "71.5" should be entered if there are adjustments to both tax types.

The audit period used on the cover letter prints in calendar format but is a prompted entry on the template.

The Index to Working Papers is included in the template and is completed along with the cover letter.

Audit Report

Adjustments for both Tax Types 71 and 72 should be combined on one Audit Report.

Index

If using CATS, manually correct to remove all sales tax references. Make sure the supplemental exam names match the names on the schedules.

Audit Adjustment Reports (AAR)

There are separate AARs for premium (Tax Type 71) and maintenance (Tax Type 72) taxes. If either tax type results in a tax change, the following information should be filled out on the applicable AAR:

- Taxpayer name,
- Taxpayer number,
- Audit period: YY,
- Audit type,
- Auditor ID,
- Open collection record information,
- Field office,
- Total tax adjustment,
- Payment information: run XICOLL for payment information,

- Report years: list only report years in which an adjustment was made. The report year should be in YY format and should be listed in chronological order,
- Tax amount: list dollars and cents. On the Tax Type 72 AAR, indicate zero adjustments for particular maintenance tax types with either a zero or a dash, and
- Totals: Make sure the total is the sum of all entries on this form. The Total Tax Adjustment should balance to the sum of each years' adjustment to the penny. This may require rounding to ensure the two totals balance.

Audit Adjustment Workpapers

Standardized worksheets (called "Exams") have been adopted for insurance audits and must be used for consistency, clarity and ease of understanding for all parties that may review them. Exams must include:

- Taxpayer name,
- XISUMM, city, state,
- Exam title indicating the type of adjustments to be made on the exam such as Adjustments to Reported Premiums,
- Exam designation (such as Exam 100, Exam 1), Date and Auditor's Initials,
- Taxpayer number,
- Page numbers in the following format: Page xx of xx,
- Filename,
- Column headings on each page of the exams, and
- Footnotes.

The first exam in the audit package should be the "Tax Adjustment Summary" and it has no exam number. Footnotes must include explanations for all mathematical calculations not clearly shown in separate columns or rows on the exams. Sources of data such as "reported gross premiums from returns filed" or "audited amounts from general ledger" should be listed for all scheduled items. Forwarding footnotes **to and from** other exams must be shown. Any other comments pertinent to the method of reasoning used to determine the facts and amounts shown on the exams should also be footnoted.

If more than one type of tax adjustment is being made, a summary exam calculating total tax due must be completed. Exams should flow forward to the final summary exam, i.e., from back to front.

Exhibits

All exhibits must be labeled as such and numbered using Roman numerals. Pages of each exhibit must also be numbered. The taxpayer's name and number must be included on each exhibit.

The Agreement to Extend Period of Limitations is always labeled as Exhibit I, if applicable. Remember that two extensions are required, one for each tax type.

The tax type should be referred to as “Insurance Premium Tax” or “Insurance Maintenance Tax/Assessment”. Use this reference on notification of sampling forms and agreements to extend periods of limitation, etc.

Audit Plan

The second page of the audit plan must be the Auditor Independence Statement. This form can be completed in CATS or by using the template for miscellaneous tax types.

The auditor is also required to update in CATS the Fieldwork Activity tab under the Assignment button for important dates. These dates should reflect when data files are requested from the taxpayer, when they are received, when additional information is requested and when schedules are sent to the taxpayer.

NAIC Group Information

Information on all companies within the taxpayer's NAIC group, Schedule Y, must be provided in the audit plan. This is to ensure that all companies within the group were researched to determine the entities for which audits were warranted. Note the company name, NAIC number, TDI number and whether or not an audit was generated.

Labeling

At a minimum, each page of the audit plan should have the taxpayer’s name, taxpayer number, tax type and page number on it in the header.

Credit Information

If an adjustment is required relating to exam fees and other TDI credits, then written confirmation must be included as an exhibit to the audit as well as documented in the audit plan.

Amended Audits

Amendments necessitate that the auditor begin with the original audit adjustments and make changes to them. The auditor should start by requesting a copy of the original audit backup from RPC. Make the necessary changes to the exams by zeroing out the transaction amount or by changing the amount to the amended amount and footnoting the change. Transactions or line items on exams should not be deleted in order to preserve the original audit trail. All amended exams should be titled as "Amended."

Hearings Documentation (if applicable)

Amended audits are generated either by Audit Headquarters as the result of a hearing or by the local audit office. The headquarter request for amendment is accompanied by an "Audit Amendment Request" form. The auditor completes Item 15 of this form.

P & I Waiver Worksheet

A new P & I Waiver Worksheet is needed if the waiver decision differs from that of the original audit. The adjustments should be re-evaluated to see if the amended audit results impact the original waiver decision. If the amended audit is changed from a No Tax Due or credit to a deficiency, then a waiver worksheet is also needed.

If there is no change in the decision from the original, then the P&I waiver worksheet is excluded, and a note to reviewer is made to indicate the original decision and that it has not changed. (i.e., “Penalty was waived on the original audit and will be waived on this amendment.”)

Amended Audit Report
If the field office amends the audit, the amended audit report should indicate all areas changed by the auditor as well as a brief statement outlining the basis for the adjustment. If the audit was amended due to a hearing, a brief statement as noted below is sufficient. The same statement can also be used for position letters. Interested parties can then refer to those documents for specific instructions. The auditor should refrain from listing every transaction changed because of the greater chance for human error when the report is typed. Label the report "Amended Audit Report." Include the To: and cc: information if applicable on the Amended Audit Report.

Amended Index to Working Papers
The auditor should make a copy of the original audit index and make appropriate changes to it. All amended exams should be listed. The original exhibits are not included and should be lined out. Add additional exhibits to the index, if applicable, and label them with the next available Roman numeral following the original exhibits. Label the index and exams "Amended." For example, Exam 200 – Adjustments to Reported Premiums – Amended.

Audits Amended to Zero
Audits amended to zero do not require exams or an index. An "Amended Audit Report" will explain that the audit now results in no additional taxes due.

No Change Amendments
Amended audits where no changes are made to the original amounts do not require exams or an index. The auditor completes an amended audit plan and an amended audit report. A comment should be made in Agency Work Manager (AWM) that no changes were made. Include a brief explanation of the reason for no changes.

Imaging
Place any taxpayer work papers and other documentation you wish to be imaged behind the amended audit plan.

APPENDIX
DEFINITIONS OF INSURANCE TERMS

Term	Definition
Admitted Company	An insurance company authorized and licensed to do business in a given state.
Affiliated Companies	Insurers linked together through common stock ownership or through interlocking directorates.
Agent	One who solicits, negotiates or effects contracts of insurance on behalf of an insurer. The agent's right to exercise various functions, authority and obligations and the obligations of the insurer to the agent are subject to the terms of the agency contract with the insurer, to statutory law and to common law.
Aggregate Excess of Loss Reinsurance	A form of Excess of Loss Reinsurance that indemnifies the ceding company against the amount by which its losses incurred during a specific period, usually 12 months, exceed either: 1. a predetermination dollar amount or 2. a percentage of the company's premiums (loss ratio) for that period. This is commonly referred to as Stop-Loss Reinsurance.
Alien Insurer	An insurer formed under the laws of a country other than the United States. A U.S. company selling in other countries is also an alien insurer.
Annual Report	For purposes of the Comptroller, the term Annual Report shall refer to the Texas Annual Insurance Premium Tax Report (Licensed Companies and Miscellaneous Organizations), Form 25-100; Texas Annual Insurance Tax Report (Independently Procured Insurance), Form 25-103; Texas Annual Insurance Tax Report (Surplus Lines/Purchasing Groups), Form 25-104.
Annual Statement	A report to the state insurance department of the year's financial results. The insurer's income and expenses are stated in detail as well as its assets and liabilities.
Annuity	1. An amount of money payable yearly, or by extension, at other regular intervals.

Term	Definition
	2. An agreement by an insurer to make periodic payments that continue during the survival of the annuitant(s) or for a specified period.
Annuity Certain	An annuity that pays income for a fixed number of years regardless of whether the insured lives or dies. If it pays for life after the certain period, it is called an “annuity certain and for life thereafter.”
Annuity Due	An annuity under which the benefits are paid at the beginning of the benefit period.
Assigned Number	A unique number assigned to licensed insurance companies and certain other taxpayers by the Texas Department of Insurance.
Assigned Risk	A risk which is not ordinarily acceptable to insurers, and which is, therefore, assigned to insurers participating in an assigned risk pool or plan. Each participating company agrees to accept its share of these risks.
Bankers Blanket Bond	A type of insurance coverage purchased by banks to pay for losses due to the dishonesty of employees as well as losses caused by people other than employees due to burglary, robbery, larceny, theft, forgery and mysterious disappearance.
Basic Health Care Services	Health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.
Basic Premium	A fixed cost charged in a retrospective rating plan. It is a percentage of the standard premium and is designed to give the insurer the money needed for administrative expenses and the agent’s commission plus an insurance charge.
Binder	An agreement executed by an agent or insurer (usually the latter) putting insurance into force before the contract has been written or the premium paid. This term is not usually used in Life Insurance. See also Cover Note.
Blanket Bond	A type of fidelity bond which covers losses caused by the dishonesty of all employees as opposed to bonds which specifically identify only certain employees to be covered.

Term	**Definition**
Book Of Business	A total of all insurance accounts written by a company or agent. It may be treated in different ways. For example: an insurer’s book of automobile business, an agent’s overall book of business or an agent’s book of business with each insurer.
Bordereau	1. A written report of individual cessions, usually detailed to show such items as reinsurance premiums or reinsurance losses with respect to specific risks. 2. A memorandum containing information concerning documents that accompany it. Used extensively in passing reinsurance from one insurer to another under a reinsurance agreement and by Property and Liability general agents for passing information to various insurers on coverages written.
Broker	One who represents an insured in the solicitation, negotiation or procurement of contracts of insurance, and who may render services incidental to those functions. By law the broker may also be an agent of the insurer for certain purposes such as delivery of the policy or collection of the premium.
Broker Of Record	A broker who has been designated to handle certain insurance contracts for the policyholders.
Capitation	A rate paid, usually monthly, to a health care provider. In return, the provider agrees to deliver the health services agreed upon to any covered person.
Captive Insurer	A legally recognized insurance company organized and owned by a corporation or firm whose purpose is to use the captive to write its own insurance at rates lower than those of other insurers. Usually, it is a non-admitted insurer that has the right, under special circumstances, to reinsure with an admitted insurer.
Cede	1. To transfer to a reinsurer all or part of the insurance or reinsurance written by a ceding company. 2. The act of buying reinsurance.
Certificate Of Authority (COA)	1. Issued by the state, it licenses the operation of a Health Maintenance Organization (HMO).

Term	Definition
	2. A certificate issued by a state department of insurance showing the authority of an insurer to write contracts of insurance in that state. 3. A certificate showing the powers that an insurer grants to its agents.
Certified Self-Insurer (CSI)	A company that self-insures for workers' compensation coverage. These companies must register with the Texas Workers' Compensation Commission and are then "certified" by the Commission. As self-insurers, these companies are subject to maintenance taxes. For more information, see Texas Labor Code, Section 407.104.
Cession	The unit of insurance transferred to a reinsurer by a ceding company. It also refers to the process of ceding insurance to a reinsurer.
Commission	The Texas Workers' Compensation Commission.
Countersignature	The signature of a licensed agent or representative on a policy.
Countersignature Law	Refers to the laws which most states have requiring that any insurance contract in a state be countersigned by a representative of the insurer located in that state.
County Mutual	Companies organized for the purpose of insurance on the mutual or cooperative plan against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.
Cover Note	Similar to a binder, but binders are usually issued by companies and delivered to agents. A Cover Note is usually written by an agent, and it informs the insured that coverage is in effect. See also Binder. In reinsurance, a Cover Note is a statement issued by an intermediary or broker indicating that coverage has been affected.
Crop Insurance	Provides protection against damage to growing crops by such perils as hail, windstorm and fire. Traditionally, crop-hail coverage was the most common coverage sold. In recent years premiums for broad multi-peril crop insurance (MPCI) have exceeded those for the crop-hail business.

Term	Definition
Date Of Issue	The date stated in a policy as the date on which the contract was issued by the insurer. This is not necessarily the effective date of the policy.
Declaration Page	A term used in insurance other than Life or Health to denote that portion of the contract containing information such as the name and address of the insured, the property insured, its location and description, the policy period, the amount of insurance coverage, applicable premiums and supplemental representations by the insured.
Deductible Dividends	Dividends that are excluded from premium taxation. For property and casualty carriers, dividends paid to policyholders are considered deductible dividends. For Life, Accident and Health carriers, dividends applied to purchase paid-up additions to insurance or to shorten the endowment or premium payment period are considered deductible dividends.
Delivery	The actual placing of a life insurance policy in the hands of an insured.
Direct Written Premium	The premium collected, without any allowance for premiums ceded to reinsurers.
Domestic Insurer	An insurer formed under the laws of the state in which the insurance is written.
Earned Premium	The amount of the premium that has been “used up” during the term of a policy. For example, if a one-year policy has been in effect six months, half of the total premium has been earned.
Effective Date	The date on which the protection of an insurance policy or bond goes into effect.
Enrollee	An individual who is enrolled in a health care plan, including covered dependents.
ERISA	Employee Retirement Income Security Act of 1974.
Examination Fees	Expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the TDI or under its authority. The amount of all examination fees paid in each taxable year to or for the use of the State of

Term	Definition
	Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due.
Excess Insurance	A coverage designed to be in excess over one or more primary coverages, and which does not pay a loss until the loss amount exceeds a certain sum. Contrast with primary coverage.
Excess Line Broker	A person licensed to place insurance not available in his state through insurers not licensed to do business in the state. A person licensed to deal with non-admitted insurers.
Farm Mutual	Farm mutual insurance companies are companies organized on the mutual or cooperative plan against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft and land vehicles, and issued a certificate of authority by the Texas Department of Insurance to operate under the provisions of former Chapter 16 of the Insurance Code.
FCIC	Federal Crop Insurance Corporation
Flat Cancellation	The cancellation of an insurance policy or bond as of its effective date, before the insurer has assumed liability. This requires the return of paid premium in full since the insured has never been covered under the policy.
Foreign Insurer	An insurer formed under the laws of another state other than Texas. A Texas company selling insurance in another state but incorporated in Texas is a foreign insurer in other states.
Fraternal Insurance	Insurance offered a special group of people, namely, members of a lodge or a fraternal order. Such insurance may be written on an assessment basis or on a legal reserve basis.
General Agent	An individual appointed by a life or health insurer to administer its business in a given territory. He is responsible for building his own agency and service force and is compensated on a commission basis, although he possibly has some additional expense allowances.
Gross Premium	1. The net premium plus operating expenses, commissions and other expenses.

Term	Definition
	2. The premium for participating life insurance. If an insured elects to use dividends to pay premiums, this becomes the net premium when dividends are subtracted from it. Contrast with Net Premiums.
Guaranty Association Credits	Credits allowed against premium tax for assessments made by the Texas Property and Casualty Insurance Guaranty Association; the Texas Life and Health Insurance Guaranty Association; the Medical Liability Insurance Joint Underwriting Association; the Texas Title Insurance Guaranty Association; and the Texas Windstorm Insurance Association (TWIA) or its predecessor, the Texas Catastrophe Property Insurance Association.
Guaranty Fund Assessment Credit – Class A	An assessment authorized under TIC Section 463.152(b) (Classes of Assessments) and called by the Texas Life and Health Insurance Guaranty Association to pay the association's administrative costs, administrative expenses and other general expenses that are not related to a particular impaired or insolvent insurer.
Guaranty Fund Assessment Credit – Class B	An assessment authorized under TIC Section 463.152(c) and called by the Texas Life and Health Insurance Guaranty Association to the extent necessary to carry out its duties relating to impaired or insolvent insurers.
Health Insurance	Insurance against loss by sickness or bodily injury. The generic form for those forms of insurance that provide lump sum or periodic payments in the event of loss occasioned by bodily injury, sickness or disease, and medical expense. The term Health Insurance is now Medical Expense Insurance, Accidental Death Insurance and Dismemberment Insurance. The form is sometimes called Accident and Health, Accident and Sickness, Accident or Disability Income Insurance.
Health Maintenance Organization (HMO)	An HMO is a prepaid medical service plan which provides services to plan members. Medical providers contract with the HMO to provide medical services to plan members. Members must use contracted providers. The emphasis is on preventive medicine, and it is an alternative to employee benefit plans. Employers of more than 25 persons are required to offer the alternative of HMO to employees, but not if the cost exceeds that of present employee benefit plans.

Term	Definition
Impaired Insurer	1. An insurer which is in financial difficulty to the point where its ability to meet financial obligations or regulatory requirements is in question. 2. A member insurer that is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency and that has been designated an impaired insurer by the commissioner; or 3. A member insurer placed in conservatorship after it has been determined to be insolvent and that has been designated an impaired insurer by the commissioner.
Independently Procured Insurance (IP)	An insurance placement in which all transactions involved in the negotiation and procurement of insurance occur outside the state and in which coverage is written with an insurer not licensed in Texas. If an insurance agent is involved in the transaction, it is not independently procured insurance.
Insolvent Insurer	Any insurer licensed or that holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided, and includes any insurer whose license or certificate of authority in this state that have been suspended, revoked, not renewed or voluntarily withdrawn, including a mutual assessment corporation, a local mutual association, a statewide mutual assessment company and a stipulated premium company licensed to do business in this state, but does not include: A. a health maintenance organization; B. a fraternal benefit society; C. a mandatory state pooling plan; D. an insurance exchange; or E. any entity similar to any of those described by Paragraphs (A)-(D) of this definition.
Insurance Business	Any of the following acts in this state effected by mail or otherwise is defined to be doing insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. • The making of or proposing to make, as an insurer, an insurance contract. • The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other

Term	Definition
	legitimate business or activity of the guarantor or surety. • The taking or receiving of any application for insurance. • The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof. • The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state. • Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such employer. • Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital or optometry expenses, whether this coverage is by direct payment, reimbursement or otherwise. • The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

Term	Definition

	• Any other transactions of business in this state by an insurer.
	• With respect to policies authorized under TIC Chapter 1652 (Medicare Supplement Benefit Plans), the use, creation, publication, mailing or dissemination of an advertisement relating to any of the acts defined in this subsection to be doing an insurance business unless:
	    o that advertisement is used, created, published, mailed or disseminated on behalf of a person or insurer authorized under this title to engage in the business of insurance in this state, who has actual knowledge of the content of the advertisement and has authorized the advertisement to be used, created, published, mailed or disseminated on that person's or insurer's behalf; and
	    o the person or insurer on whose behalf the advertisement is used, created, published, mailed or disseminated is, in that advertisement, clearly identified by name as the sponsor of the advertisement.

Insurer	All corporations, associations, partnerships and individuals engaged as principals in the business of insurance and includes interinsurance exchanges, mutual benefit societies and insurance exchanges and syndicates as defined by rules promulgated by the Texas Department of Insurance.
Interest Earned on Surplus Lines Taxes	Interest earned on accounts in which surplus lines tax moneys are maintained. This interest shall be reported on the surplus lines tax report and must be paid via the report form.
Joint Underwriting Association (JUA)	A voluntary unincorporated association of admitted insurers authorized to do business in this state that has been authorized by its member insurers to act on behalf of those insurers in joint underwriting or in the issuance of syndicate policies of insurance on a several but not joint basis.
Life, Health & Accident Insurance Carriers (L/A&H)	Those insurance companies licensed to write life, health and accident insurance transacting any such insurance business in the state, except for those that limit membership to one occupation.

Term	**Definition**
Line Slip	A document (most commonly used at Lloyd's) which describes a risk to be insured. It is circulated by brokers, and underwriters subscribe to it by indicating what percentage of the risk they are willing to take.
Lloyds	Generally, refers to Lloyd's of London, England, an institution within which individual underwriters accept or reject the risks offered to them. The Lloyd's Corporation provides the support facility for their activities.
Local Mutual Aid Association (LMA)	These companies provide benefits for members and also death benefits for the beneficiaries of deceased members using funds that they receive from assessments made upon their members whenever it is necessary.
Maintenance Tax	This tax is actually a fee which is assessed and collected for the funding of the agencies based on premiums written during the calendar year. The rates are set by the agencies. Maintenance tax funds the Texas Department of Insurance, the Workers' Compensation Commission and the Workers' Compensation Research Center.
Mutual Insurer	An incorporated insurer without incorporated capital owned by its policyholders. Although mutual insurers do distribute their earnings to their policyholders in the form of dividends, the term should not be used in a sense that makes it synonymous with participating. In most jurisdictions, a mutual insurer is free to issue nonparticipating insurance if it chooses and a stock insurer is free to issue participating insurance. Contrast with Stock Insurer.
National Association of Insurance Commissioners (NAIC)	An association of state insurance commissioners formed for the purpose of exchanging information and of developing uniformity in the regulatory practices of the several states through drafting model legislation and regulations. The NAIC has no official power to enforce compliance with its recommendations.
Net Premium	1. The amount of premium minus the agent's commission. 2. The premium necessary to cover only anticipated losses, before loading to cover other expenses. 3. The original premium minus dividends paid or anticipated in participating life insurance when the insured elects to use dividends toward payment of the premiums. Contrast with Gross Premium.

Term	**Definition**
Nonadmitted Assets	Assets that do not qualify under state law for insurance statement purposes. Examples would be furniture, fixtures, agents' debit balances and accounts receivable which are over ninety days old.
Non-Taxable Premiums	Premiums exempt from taxation by state statute or preempted by federal statute or rule.
Office Of Public Insurance Counsel Assessment	An assessment collected to defray the costs of creating, administering and operating the Office of Public Insurance Counsel (OPIC). Each property and casualty insurer and each title insurer authorized to do business in this state shall pay an annual assessment for each property and casualty insurance policy or each title insurance policy in force at year end. Life, A&H and HMO insurers shall pay an annual assessment for each individual policy and for each certificate of insurance evidencing coverage under a group policy of life, health or accident insurance written for delivery and placed in force.
Overhead Assessment	Charges to cover the cost of administrative non-direct departmental expenses attributable to the examination of insurance companies.
Plan Sponsor	A person, other than an insurer, who establishes, adopts or maintains a plan that covers residents of this state, including a plan established, adopted or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, an association, a committee, a joint board of trustees or any similar group of representatives who establish, adopt or maintain a plan.
Premium Tax Rate	Statutorily set rate of assessment applied to taxable premiums.
Prepaid Legal Organization	Companies that are incorporated to provide legal service by using contract attorneys. They are incorporated as a non-profit legal service plan.
Primary Coverage	1. This is the coverage which pays expenses first, without considering whether there is any other coverage. See also Coordination of Benefits. 2. Insurance coverage which covers from the first dollar, perhaps after a deductible, as distinguished from excess

Term	Definition
	coverage which pays only after some primary coverage has been exhausted. Contrast with Excess Insurance.
Primary Insurer	The company that originates business, i.e., the ceding company.
Pro Rata Cancellation	The termination of an insurance contract or bond with the premium charge being adjusted in proportion to the exact time the protection has been in force. Contrast with Short Rate Cancellation.
Property & Casualty Insurance Carriers (P&C)	Insurance carriers, including Lloyd's and reciprocal exchanges receiving premiums from the business of fire marine, marine inland, accident, credit livestock, fidelity, guaranty, surety, casualty, workers' compensation and employers' liability.
Purchasing Group	A group having similar risks that have banded together to purchase comprehensive liability insurance group policies which include coverage for product liability risks. The group is organized for the purpose of buying liability coverage on a group basis from an insurance company or a risk retention group but does not bear the risk of absorbing losses arising from such coverages.
Rebate	A portion of the agent’s commission returned to an insured or anything else of value given an insured as an inducement to buy. The payment of policy dividends, retroactive rate adjustments and reduced premiums that reflect the savings of direct payment to an agent or home office are not usually considered to be rebates. In most cases rebates are illegal, both for the agent or insurer to give a rebate and for an insured to receive one.
Reciprocal Insurance Exchange	An unincorporated group of individuals, called subscribers, who mutually insure one another, each separately assuming their share of each risk. Its chief administrator is an attorney in fact.
Recording Agent	The name by which a policy-writing agent is known in the Property Insurance business.
Red-Lining	Discriminating against a risk solely because of its location. An example would be refusing to insure a risk because the

Term	Definition
	building is located in a depressed area or location. Sometimes these areas are referred to as blackout areas.
Registered Risk Retention Groups	A risk retention group is an entity formed by similar businesses to insure each other's product liability risks and which functions as an insurance company and bears the risk exposure of its group members. It must be licensed in at least one state (but not Texas) to write liability insurance.
Reinsurance	A type of insurance that involves acceptance by an insurer, called the reinsurer, of all or a part of the risk of loss covered by another insurer, called the ceding company. It is a way for an insurer to avoid having to pay for large or catastrophic losses.
Reinsurance Assumed	1. See Cession. 2. The premium for an assumption of reinsurance.
Reinsurance Ceded	See Cession.
Retaliatory Tax	This tax is applicable to foreign and alien insurance companies writing insurance policies for title, property and casualty, life, health and accident premiums. The retaliatory tax provision provides for a computation of taxes, fees and assessments due based on Texas requirements compared to out-of-state requirements.
Retrospective Rating	A plan for which the final premium is not determined until the end of the coverage period and is based on the insured's own loss experience for that same period. It is subject to a maximum and minimum. A plan of this type can be used in various types of insurance, especially Workers' Compensation and Liability, and is usually elected by only very large insureds. Also see Basic Premium.
Return Premiums	A portion of the premium returned to a policy owner as a result of cancellation, rate adjustment or a calculation that an advance premium was in excess of the actual premium.
Risk Retention Groups	Liability insurance companies owned by their policyholders. Membership is limited to people in the same business or activity which exposes them to similar liability risks. The purpose is to assume and spread liability exposure to group members and to provide an alternative risk financing mechanism for liability.

Term	**Definition**
Runoff	A termination provision in a reinsurance contract stipulating that the reinsurer shall remain liable for loss under each reinsured policy in force until its expiration date.
Self-Insurance	Making financial preparations to meet pure risks by appropriating sufficient funds in advance to meet estimated losses, including enough to cover possible losses in excess of those estimated. Few organizations are large or dispersed enough to make this a sound alternative to insurance.
Semiannual Estimated Tax Payments	A semiannual estimated tax prepayment is due for all licensed companies subject to premium tax. The estimated tax payment must be at least 50% of the previous year's tax liability or must be calculated on the premiums received in the applicable two previous calendar quarters. Each semiannual prepayment can also be calculated based on 50% of the net estimated current premium tax liability for the current tax year.
Single Health Care Service	A health care service that an enrolled population may reasonably require in order to be maintained in good health with respect to a particular health care need for the purpose of preventing, alleviating, curing or healing human illness or injury of a single specified nature and that is to be provided by one or more persons each of whom is licensed by the state to provide that specific health care service.
Single Interest Policy	Insurance protecting the interest of only one of the parties having an insurable interest in property, such as insurance protecting a mortgagee but not a mortgagor or protecting a seller but not a buyer.
Short Rate Cancellation	A cancellation procedure in which the premium returned to the insured is not in direct proportion to the number of days remaining in the policy period. In effect, the insured has paid more for each day of coverage than if the policy had remained in force for the full term. Contrast with Pro Rata Cancellation.
Solvency	With regard to insurers, having sufficient assets (capital, surplus, reserves) and being able to satisfy financial requirements (investments, annual reports, examinations) to be eligible to transact insurance business and meet liabilities.

Term	Definition
State Fund	The Texas Workers' Compensation Insurance Fund which is a licensed workers' compensation insurer created by statute to be the insurer of last resort.
Stock Insurer	An incorporated insurer with capital contributed by stockholders, to whom the earnings are distributed as dividends on their shares. Contrast with Mutual Insurer.
Stop-Loss	Any provision in a policy designed to cut off an insurer's losses at a given point. In effect, a stop-loss agreement guarantees the loss ratio of the insurer.
Stop-Loss Insurance	This is a type of reinsurance which can be taken out by a health plan or self-funded employer plan. The plan can be written to cover excess losses over a specified amount either on a specific or individual basis, or on a total basis for the plan over a period of time such as one year.
Stop-Loss Reinsurance	1. See Aggregate Excess of Loss Reinsurance. 2. A form of reinsurance under which the reinsurer reinsures the ceding insurer for an amount by which the latter's incurred losses in a calendar year for a specified class of business exceed a specified loss ratio.
Sub-Agents	Agents reporting to other agents or general agents, and not directly to the company.
Subscription Policy	A policy to which two or more insurers may subscribe, indicating in the policy the share of the risk to be borne by each insurer.
Surplus Lines	A risk or a part of a risk for which there is no market available through the original broker or agent in its jurisdiction. Therefore, it is placed with non-admitted insurers on an unregulated basis, in accordance with the surplus or excess lines provisions of the state law.
Surplus Lines Agents	An agent licensed under Subchapter E of Chapter 981, Insurance Code, to procure an insurance contract from a surplus lines insurer.
Surplus Lines Insurance (SL)	Insurance transactions which are entered into by citizens of this state with unauthorized insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers.

Term	Definition
Surplus Lines Stamping Office of Texas (SLSOT)	A nonprofit organization created by the Texas legislature in 1987 to assist the TDI in regulating surplus lines agents and companies and to encourage compliance among agents and companies with the surplus lines laws and rules.
Surtax	A temporary tax imposed on all taxpayers subject to a premium tax to provide a means of revenue generation for a specific period of time.
Tax Year	The calendar year, January 1 to December 31.
Term Insurance	The type of life insurance policy that provides protection only for a specified period of time. A common policy period would be one year, five years, 10 years or until the insured reaches age 65 or 70. It does not build up any of the nonforfeiture values associated with Whole Life policies. Contrast with Whole Life Insurance.
Texas Department of Insurance Examination Fee	Fees incurred by financial examiners of the TDI while examining the books and records of a domestic insurance company. These fees may be used in full as a credit against premium taxes incurred in the same year of examination.
Texas Department of Insurance (TDI)	TDI is responsible for regulating, examining and monitoring the financial solvency of insurance companies domiciled in the state of Texas. TDI is also responsible for the licensing of both companies and agents to place insurance in this state.
Texas Insurance Code (TIC)	The book of statutes or regulatory code that governs insurance operations in the state of Texas. The TIC is published every other year, on the odd year to reflect statute changes enacted by the Texas Legislature.
Texas Medical Liability Insurance Underwriting Association Act	A joint underwriting association was created consisting of all insurers authorized to write and engage in writing with this state on a direct basis, automobile liability and liability other than auto insurance on or after January 1, 1975, as provided in the Insurance Code. The purpose of the association is to provide medical liability insurance on a self-supporting basis. Medical liability insurance is defined as primary and excess insurance coverage against the legal liability of the insured and against loss, damage or expense incident to the claim arising out of the death or injury of any person as the result of negligence in rendering or the failure to render

Term	Definition
	professional service by a health care provider or physician who is in one of the categories eligible for coverage by the association. Every insurer is a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this state.
Texas Motor Vehicle Crime Prevention Authority (MVCPA)	Originally the Automobile Theft Prevention Authority, this agency was created under House Bill 640, 72nd Legislature, 1991. To fund the operation of this authority, all insurers writing motor vehicle lines of business in Texas are required to pay an assessment to the MVCPA per motor vehicle year for all policies providing primary liability coverage, including private and commercial lines of insurance, trucks, trailers, equipment mounted to trailers and motorcycles. The MVCPA is currently authorized by Transportation Code, Chapter 1006 (Motor Vehicle Crime Prevention Authority).
Texas Property & Casualty Insurance Guaranty Act	The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment; to avoid financial loss to claimants or policyholders because of the impairment of an insurer; to assist in the detection and prevention of insurance insolvencies; and to provide an association to assess the cost of that protection among insurers.
Texas Property and Casualty Insurance Guaranty Association	A nonprofit, unincorporated legal entity composed of all member insurers, who must be members of the association as a condition of their authority to transact insurance in this state.
The Life, Accident, Health and Hospital Service Insurance Guaranty Association	A nonprofit legal entity. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state.
Third-Party Administrator (TPA)	A person who collects premiums or contributions from or who adjusts or settles claims in connection with life, health and accident benefits or annuities for residents of this state.
Title Carriers	The "business of title insurance" is making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance or the transacting or proposing to transact any phase of title insurance, including solicitation, title

Term	Definition
	examination, closing transaction and execution of a contract of title insurance.
TPA Administrative or Service Fees	All consideration, fees, assessments, payments, reimbursements, dues and other compensation, excluding sales commissions, received for services as an administrator during a calendar year.
TPA Maintenance Tax Requirements	An annual maintenance tax in an amount not to exceed one percent of the correctly reported administrative or service fees is to be assessed against all administrators that are covered by certificates of authority.
Unauthorized Insurer	An insurer not licensed or authorized to do the business of insurance in this state.
Universal Life	A combination flexible premium, adjustable life insurance policy. The premium payer may select the amount of premium he or she can pay and the policy benefits are those which the premium will purchase. Or the premium payer may change the amount of insurance and pay premium accordingly.
Valuation Fees	A fee assessed against **domestic** life insurance carriers. The rate is $10.00 for each million or fraction of a million of life insurance "in force" at the end of the calendar year, less reinsurance assumed. This fee may be taken as a premium tax credit in the tax year paid.
Whole Life Insurance	Insurance which may be kept in force for a person’s whole life, and which pays a benefit upon the person’s death, whenever that may be. All Whole Life policies build up nonforfeiture values, but they are paid for in three different ways. Under a Straight or Ordinary Life policy, premiums are paid for as long as the insured lives. A single premium policy is paid for at one time in one premium. Between these two types there are many limited-payment plans, under which the insured pays premiums for a certain period or until reaching a certain age. Contrast with Term Insurance.
Workers' Compensation Commission (WCC)	The Texas Workers' Compensation Commission administers a statewide program to provide fair and appropriate benefits to Texas workers who suffer job-related injuries or illnesses. The Commission was created by the Texas Legislature as part of the Texas Workers' Compensation Act. Key areas of

Term	**Definition**
	the Commission's responsibilities include: Providing a framework for compensating injured or ill workers; promoting safer and healthier workplaces for all workers; and ensuring compliance with the Texas Workers' Compensation Act and agency rules. The Commission is primarily funded by a maintenance tax paid by all insurance companies that provide workers' compensation insurance policies in Texas. The maintenance tax may not exceed 2% of the total amount of workers' compensation insurance premiums paid by Texas employers each year. Additional funding is provided by federal grants and fees paid to the Commission for certain services and a maintenance tax paid by companies that are approved to self-insure (certified self-insurers).
Written Premiums	The total premiums on all policies written by an insurer during a specified period of time, regardless of what portions have been earned. Contrast with Earned Premium.