

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
PO BOX 110805
JUNEAU, AK 99811-0805

Order # TA 17-01)
In the Matter of Audit of)
Gerald J Sullivan & Assoc of Oregon LLC)
_____)

FINDINGS OF FACT

1. An audit report of Gerald J Sullivan & Assoc of Oregon LLC, licensed in the State of Alaska, has been issued by the State of Alaska, Division of Insurance to Gerald J Sullivan & Assoc of Oregon LLC.
2. The audit report of Gerald J Sullivan & Assoc of Oregon LLC (TA 17-01) has been transmitted to John Coleman, Compliance Officer, Gerald J Sullivan & Assoc of Oregon LLC (Auditee), and Auditee has been accorded at least 30 days' opportunity to review and comment on this audit report.
3. The director of the Division of Insurance has fully considered and reviewed the report and any relevant portions of the auditor's work papers to the extent she considered necessary.

CONCLUSIONS OF LAW

1. The written audit report referred to in Finding of Fact No. 1 was issued in accordance with Alaska Statute (AS) 21.06.150(b).
2. The actions set forth in finding of Fact No. 2 were conducted in accordance with AS 21.06.150(b).
3. The director of the Division of Insurance has reviewed the audit report and any other relevant work papers as set forth in Finding of Fact No. 3 to the extent she considered necessary in accordance with AS 21.06.150(b).

ORDER

IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of Gerald J Sullivan & Assoc of Oregon LLC (TA 17-01) is approved as filed.

2. Pursuant to AS 21.06.060, the audit report shall be kept in the office of the director of the Division of Insurance and be open to public inspection.

This order is effective June 13, 2017.

Dated this 13th day of June, 2017 at Anchorage, Alaska.



Lori Wing-Heier, Director
State of Alaska
Division of Insurance

PREMIUM TAX AUDIT OF

Gerald J Sullivan & Assoc of Oregon LLC

Portland, OR

Alaska License # 15882

TA 17-01

As of December 31, 2016

Issued by

DIVISION OF INSURANCE

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC

DEVELOPMENT

STATE OF ALASKA



FINAL REPORT:

June 13, 2017

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June 13, 2017

Lori K Wing-Heier, CIC, CRM
Director, Division of Insurance
Department of Commerce, Community and Economic Development
550 West 7th Avenue, Suite 1560
Anchorage, AK 99501-3567

Pursuant to Alaska Statute (AS) 21.06.130, the Alaska Division of Insurance performed a limited and targeted premium tax audit of Gerald J Sullivan & Assoc of Oregon LLC on May 15, 2017 through May 17, 2017, in the broker's Portland, OR office. The audit was conducted by Rebecca Nesheim, tax auditor for the Alaska Division of Insurance.

Gerald J Sullivan & Assoc of Oregon LLC

SCOPE OF AUDIT

This premium tax audit was called to review compliance with the surplus lines statutes AS 21.34, and regulations 3 AAC 25 and the premium tax regulations 3 AAC 21.550 – 570. This is the second premium tax audit of Gerald J Sullivan & Assoc of Oregon LLC conducted by the Alaska Division of Insurance (the division).

Subject Matters Audited

Gerald J Sullivan & Assoc of Oregon LLC (the broker) is an Alaska licensed surplus lines broker based in Portland, OR. The division elected to audit their quarterly filings, premium taxes and filing fees paid for accuracy and timeliness as well as required diligent search efforts, disclosures, notifications, and prompt delivery of material facts in evidence of insurance to the insured.

Time Frame

The audit covered the broker's surplus lines business for policy effective dates occurring between January 1, 2015 and December 31, 2016.

METHODOLOGY

The division sent the call letter and initial data requests to the broker's office in Portland, OR. A list of all Alaska business transactions with nonadmitted insurers was requested for the period to be audited. The broker complied on a timely basis with all data requests. The number of policies written during the audit period was 247, from which a sample of 50 files was selected for audit.

The following are the procedure steps for the audit:

- 1) Verify that quarterly reports and accompanying forms were filed on time.
 - i) Audit steps taken:
 - (1) Reviewed the quarterly reports sent to the Alaska Division of Insurance and verified they were filed by the due date.
- 2) Verify the accuracy of the premium calculation.
 - i) Audit steps taken:
 - (1) Reviewed policy, binders, and invoices to determine how taxable premium was calculated.
 - (2) Verified the correct premium was reported on the reports as filed.
- 3) Verify the accuracy of quarterly reports filed.
 - i) Audit steps taken:
 - (1) Reviewed the policy, binder, and endorsement pages in each file.
 - (2) If the effective date did not match the quarterly filing, reviewed the correspondence to ensure the documentation in the file matched when the policy was booked. Most of these occurred with endorsements that often require additional information and sometimes company approval before it can be added to the policy. The invoice date determines in which quarter the endorsement is required to be filed.
 - (3) Verified the quarterly reports as filed with the division were accurately filled out to reflect the correct effective date, premiums, taxes and fees based upon the information in the files.
 - (4) Verified a statement of exempt premiums was filed when appropriate.
 - (5) Verified the policy was included in the quarterly filing based upon the effective date of the policy.
 - (6) Verified the insured name, insurance company, policy type codes, producer names and license numbers were accurate on the forms filed.
 - (7) Verified the descriptions of the subject and locations of risk were identified on the reports.
- 4) Confirm Alaska is the home state of the insured.
 - i) Audit steps taken:
 - (1) Verified where the principal place of business or residence of the insured is located.
 - (2) Verified at least partial risk is located in Alaska or the highest % of premium in Alaska if headquarters not in Alaska with no risk in the headquarters state.
- 5) Verify if tax and filing fee payments were made on time and by ACH.
 - i) Audit steps taken:
 - (1) Confirmed when the payments were received by the Alaska Division of Insurance and the payment method.

- 6) Verify tax and filing fee payments were made accurately.
 - i) Audit steps taken:
 - (1) Confirmed if the tax and fee payments matched the quarterly reports as filed.
- 7) Review effort made to place insured with an admitted insurer.
 - i) Audit steps taken:
 - (1) Verified the diligent search was documented prior to binding and the declinations completed. If there were no declinations due to risk on the placement list, the list effective at the time of placement was reviewed to ensure the risk was on the list.
- 8) Review prompt delivery of evidence of insurance AS 21.34.100(a) and 3 AAC 25.060.
 - i) Audit steps taken:
 - (1) Reviewed dates of binding and forwarding evidence of insurance to insured.
- 9) Review required material facts are located on evidence of insurance AS 21.34.100(a).
 - i) Audit steps taken:
 - (1) Reviewed documents to confirm required material facts were located on the evidence of insurance when policy not available within 30 days of binding.
- 10) Review disclosures for use of non-admitted insurer.
 - i) Audit steps taken:
 - (1) Reviewed the evidence of insurance to ensure the broker's name and language required by statute AS 21.34.100(e) is present and legible.
- 11) Review notifications for use of non-admitted insurer.
 - i) Audit steps taken:
 - (1) Reviewed the correspondence and other documentation in the files to find a copy of the notification sent to the insured that meets the requirement in AS 21.34.110
- 12) Confirm coverage is placed with an eligible non-admitted insurer.
 - i) Audit steps taken:
 - (1) Reviewed the Alaska published white lists and NAIC Quarterly Listings of Alien Insurers to ensure the company was eligible at the time of placement.
- 13) Review notice regarding nonrenewal and premium increase
 - i) Audit steps taken:
 - (1) Verified there was an Alaska Policyholder Notice regarding nonrenewal and premium increase included with the policy in the format approved by the Director of the Alaska Division of Insurance.

Acceptable Error Rate:

The Broker's acceptable error rate for the above referenced standards and tests must be less than 10%.

PREMIUM TAX AUDIT

- | |
|--|
| 1. Verify quarterly reports and accompanying forms were filed on time
<b style="text-align: right;">AS 21.34.080 and .170, 3 AAC 25.090 and .100 |
|--|

Comments: The eight original quarterly reports with accompanying forms were filed on time.

Results: Passed (error rate 0%)

- | |
|--|
| 2. Verify the accuracy of the premium calculation
<b style="text-align: right;">AS 21.34.180 |
|--|

Comments: The premium was calculated incorrectly for one policy in the audit files. A company policy fee was not included in premium. There is no effect to taxes and fees as the insured is exempt under AS 21.34.180(i). An amended quarterly report will be required to adjust for the missing fees.

This error affect one additional audit test:

1. Accuracy of the Quarterly Reports

The broker continues to use the term “policy fee” instead of “broker fee” for their fee on some documents even though they were implementing new procedures to correctly identify the fee after the prior audit.

Results: Passed (49 files passed & 1 failed, error rate 2%)

Recommendations: It is recommended the broker ensure written procedures are followed to ensure all company fees are included in the calculation of premium tax and filing fees. It is also recommended the broker correctly identify their fee as “broker fee” instead of “policy fee” which can be confused as a company fee.

The broker’s response: we have discussed and reinforced here in the office that our fee is always a broker fee.

- | |
|--|
| 3. Verify the accuracy of all quarterly reports filed
<b style="text-align: right;">AS 21.34.080 and .170, 3 AAC 25.090 and .100 |
|--|

Comments: Multiple errors were noted on the Report of Surplus Lines Transaction forms and Quarterly Reports filed with the division:

- Not all states involved in the risk were identified – 4
- Subscription policies were missing the admitted company with premium and filing fees – 3
- Wrong policy # and insurance company on endorsements – 3
- Wrong policy term on both original and endorsement, did not affect quarter to be filed - 2

Total accuracy errors: 12 within 9 distinct files

These errors affect two additional audit tests:

1. Accuracy of the Premium
2. Accuracy of the Taxes and Filing Fee Payments

Results: Failed (41 files passed & 9 failed, error rate 18%)

Recommendations: It is recommended the broker ensure their written procedures are followed as the majority of the issues are already identified as how to report them accurately. It is also recommended the broker revise written procedures for how to report subscription policies. Include how to calculate the premium tax and filing fees when an admitted company is part of a subscription policy.

The broker's response: Filing procedures have been updated and reviewed regarding pertinent information.

4. Verify the home state for insured is Alaska

AS 21.34.180

Comments: The broker writes some multi-state policies. Alaska was correctly identified as the home state of the insured and thus filed the transactions correctly.

Results: Passed (error rate 0%)

5. Verify if tax and filing fee payments were made on time and by ACH

AS 21.34.180, 3 AAC 21.550 - .570

Comments: All payments were made on or before the required due date for the quarterly payments and made by ACH.

Results: Passed (error rate 0%)

6. Verify tax and filing fees payments were made accurately

AS 21.34.180, 3 AAC 21.550 - .570

Comments: All tax and fee payments made by the broker were accurate based upon the quarterly reports as filed. The errors found during the audit in the premium calculation and quarterly reports accuracy affects the accuracy of the tax and fee payments. These flow-through findings are addressed in their respective audit tests.

Due to the admitted company premium not identified originally in the subscription policy, filing fees of \$596.20 are due.

Results: Passed (error rate 0%)

The broker's response: Due to subscription policy findings the additional fee of \$596.20 was paid 06/12/17 via ACH.

7. Review diligent search effort made to place insured with an admitted insurer
AS 21.34.020, 3 AAC 25.010 and .035

Comments: The broker has elected to use the Affidavit of Due Diligence for documenting the diligent search. All documentation was received within the requirements of the law.

Results: Passed (error rate 0%)

8. Review prompt delivery of evidence of insurance
AS 21.34.100(a) and 3 AAC 25.060

Comments: All files have documentation showing the evidence of insurance was provided to the insured within 30 days of the bind date.

Results: Passed (error rate 0%)

9. Review required material facts located on evidence of insurance
AS 21.34.100(a)

Comments: Eighteen binders were missing the insured address, a required piece of information for evidence of insurance sent prior to the policy being available. Policies for these 18 were sent after the 30 days from the bind date.

Results: Failed (32 files passed & 18 failed, error rate 36%)

Recommendations: It is recommended the broker revise their written procedures and checklist to include what material facts regarding the coverage, insured, insurer, and broker must be on evidence of insurance. Review statute for details.

The broker's response: Binder Material facts have been clearly identified and relayed to staff.

10. Review disclosures on evidence of insurance for use of non-admitted insurer
AS 21.34.100(e)

Comments: Two non-premium bearing endorsements in two files were missing the required disclosure language. All other evidence of insurance contained the required disclosure.

Results: Passed (48 files passed & 2 failed, error rate 4%)

Recommendations: It is recommended the broker revise written procedures and checklist to include the disclosure requirements on endorsements, both premium and non-premium bearing.

The broker's response: Written procedures have been updated to reflect stamping both premium and non-premium bearing endorsements.

11. Review notification for use of non-admitted insurer

AS 21.34.110

Comments: The broker generally includes the notification that the insurance is being placed with a company that is not regulated by the Alaska Division of Insurance on their formal quote. However, there was one file where a formal quote was not provided to the producer/insured and nothing in the file indicating the notification was provided to the insured.

Results: Passed (49 files passed & 1 failed, error rate 2%)

Recommendations: It is recommended the broker ensure their written procedures and checklist are followed to include Alaska notification language in the quote to the insured describing the surplus lines insurance company as required by statute. If a formal quote will not be provided, another format for providing the information must be identified and maintained in the file.

The broker's response: Written procedures have been updated and discussed with staff regarding required wording.

12. Confirm coverage is placed with an eligible non-admitted insurer

AS 21.34.050

Comments: All policies in the audit were placed with eligible surplus lines companies.

Results: Passed (error rate 0%)

13. Review notice regarding nonrenewal and premium increase

3 AAC 25.050

Comments: All policies included the Alaska Policyholder Notice.

Results: Passed (error rate 0%)

SUMMARY AND SUBSEQUENT EVENTS

Summary

This was a premium tax audit of Gerald J Sullivan & Assoc of Oregon LLC. The auditor tested 13 standards focusing on the broker's filing of quarterly reports and the subsequent payment of premium taxes and filing fees as well as diligent search efforts, disclosure and notification requirements for using a non-admitted insurer, and prompt delivery of material facts to insured.

The compliance officer and staff were cooperative during the audit. The tax auditor appreciated this attitude and enjoyed working with Gerald J Sullivan & Assoc of Oregon LLC's management and staff.

A couple of significant issues did arise during the audit that affect the service to the insured and compliance with Alaska statutes and regulations.

- 1) Several quarterly reports are not accurate when filed.
- 2) Some required material facts were missing from many of the binders.

The auditor has reviewed the broker's revised procedures and they appear to have accurately captured the problems identified in the audit.

Re-Audit

In closing, the auditor's recommended actions and review of the procedures should help the broker correct the problems encountered. It is recommended that Gerald J Sullivan & Assoc of Oregon LLC be re-audited within the next three years to ascertain compliance.

Submitted by:
Rebecca Nesheim
Tax Auditor

Affidavit

GERALD J SULLIVAN & ASSOC OF OREGON LLC
As of December 31, 2016
TA 17-01

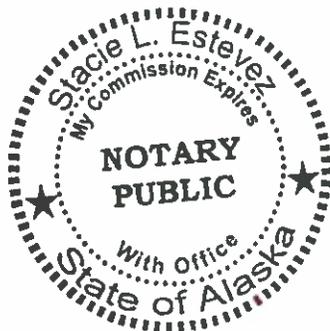
Juneau, Alaska)
June 13, 2017)
)
State of Alaska) ss.
First Judicial District)

I, being duly sworn, do verify that the report of premium tax audit as of December 31, 2016 of GERALD J SULLIVAN & ASSOC OF OREGON LLC is true to the best of my knowledge and belief.



Rebecca Nesheim
Tax Auditor

SUBSCRIBED and SWORN to before me this 14 day of June, 2017





Notary Public in and for Alaska
My Commission Expires with office