

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 08-04 )  
In the Matter of Audit of )  
AMWINS Insurance Brokerage of CA LLC )  
\_\_\_\_\_ )

FINDINGS OF FACT

1. An audit report of AMWINS Insurance Brokerage of CA LLC, licensed in the state of Alaska, has been issued by the State of Alaska, Division of Insurance to AMWINS Insurance Brokerage of CA LLC.
2. The audit report of AMWINS Insurance Brokerage of CA LLC (TA 08-04) has been transmitted to George S Maggay, Compliance Officer, AMWINS Insurance Brokerage of CA 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

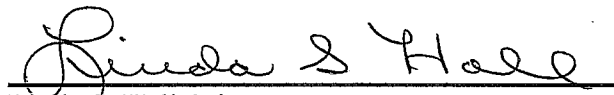
IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of AMWINS Insurance Brokerage of CA LLC (TA 08-04) 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 25, 2009.

Dated this 25<sup>th</sup> day of June, 2009 at Juneau, Alaska.



Linda S. Hall, Director  
State of Alaska  
Division of Insurance

**PREMIUM TAX AUDIT OF**  
**AMWINS Insurance Brokerage of CA**  
**Chatsworth, CA**

**TA 08-04**

**As of December 31, 2007**

**Issued by**  
**DIVISION OF INSURANCE**  
**DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC**  
**DEVELOPMENT**  
**STATE OF ALASKA**



**FINAL REPORT:**  
**June 25, 2009**

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DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Insurance

*Sarah Palin, Governor*  
*Emil Notti, Commissioner*  
*Linda S. Hall, Director*

June 25, 2009

Linda S. Hall, CPCU  
Director, Division of Insurance  
Department of Commerce, Community and Economic Development  
550 West 7<sup>th</sup> 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 AMWINS Insurance Brokerage of CA (the broker) on November 17, 2008 through November 21, 2008, in the broker's Chatsworth, CA office. The audit was conducted by Rebecca Nesheim, tax auditor for the Alaska Division of Insurance.

**AMWINS Insurance Brokerage of CA**

**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 first premium tax audit of AMWINS Insurance Brokerage of CA conducted by the Alaska Division of Insurance.

**Subject Matters Audited**

AMWINS Insurance Brokerage of CA is an Alaska licensed surplus lines broker based in Chatsworth, CA. The division selected to audit their monthly filings, premium taxes paid, and filing fees paid, for accuracy and timeliness as well as required due diligence and disclosures to the insured.

**Time Frame**

The audit covered this broker's surplus lines business for the two years of January 1, 2006 through December 31, 2007.

P.O. Box 110805, Juneau, Alaska 99811-0805  
Telephone: (907) 465-2515 Fax: (907) 465-3422 Text Telephone: (907) 465-5437  
Email: [insurance@alaska.gov](mailto:insurance@alaska.gov) Website: <http://www.commerce.state.ak.us/insurance/>

## METHODOLOGY

The tax auditor sent the call letter and initial data requests to AMWINS Insurance Brokerage of CA's office in Chatsworth, CA. A list of all Alaska business transactions with nonadmitted insurers was requested for the period to be audited. AMWINS Insurance Brokerage of CA complied on a timely basis with all data requests. The number of policies and endorsements written during the audit period was 58, from which a sample of 50 files was selected for audit. The list of nonadmitted policies the broker provided prior to the audit included several endorsements and only those endorsements for policies that did not originate with the broker remained as part of the sample .

### The following are the procedures steps for the audit:

- 1) Verify that monthly premium reports and accompanying forms were filed in a timely manner.
  - i) Audit steps taken:
    - (1) Reviewed the monthly files sent to the Alaska Division of Insurance and verified the policy was included in the monthly filing based upon the effective date of the policy.
    - (2) Verified a statement of exempt premiums was filed when appropriate.
- 2) Verify the accuracy of the premium calculation
  - i) Audit steps taken:
    - (1) Reviewed policy, declaration page, and invoices to determine how they calculated the premium.
    - (2) Verified the correct premium was reported on the monthly reports as filed.
- 3) Verify the accuracy of all monthly reports filed.
  - i) Audit steps taken:
    - (1) Reviewed the policy & declaration pages in each file.
    - (2) If the effective date did not match the monthly 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 effective date may be a month or more prior to the actual book date or invoice date. In this case, the invoice date usually determined in which month the endorsement is required to be filed.
    - (3) Verified the monthly 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) If the placement is a multi-state placement, check the calculation and reasonableness of the methodology to allocate.
  - i) Audit steps taken:
    - (1) Verified the allocation of premium for each state is reasonable and the calculation is accurate.
- 5) Verify quarterly and annual premium tax reports were filed in a timely manner.
  - i) Audit steps taken:
    - (1) Confirmed when the quarterly and annual premium tax reports were mailed to the Alaska Division of Insurance.
- 6) Verify the accuracy of the quarterly and annual premium tax reports

- i) Audit steps taken:
  - (1) Verified the quarterly and annual premium tax reports as filed with the division were accurately filled out to reflect the correct premiums, taxes and fees.
- 7) Verify if tax and filing fee payments were made on time and by ACH
  - i) Audit steps taken:
    - (1) Confirmed when the payments were made to the Alaska Division of Insurance and the payment method
- 8) Verify tax and filing fees payments were made accurately
  - i) Audit steps taken:
    - (1) Confirmed if the tax and fee payments matched the monthly reports as filed.
- 9) Review effort made to place insured with an admitted insurer
  - i) Audit steps taken:
    - (1) Verified an affidavit of due diligence was in the file and the declinations filled out. If it was marked as using the placement list, the list effective at the time of placement was reviewed to ensure the risk was on the list
- 10) Review disclosures 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
- 11) Confirm coverage is placed with an eligible non-admitted insurer
  - i) Audit steps taken:
    - (1) Reviewed the white lists to ensure the company was eligible at the time of placement
- 12) Review notice regarding nonrenewal and premium increase
  - i) Audit steps taken:
    - (1) Verified in each file there was a policyholder notice regarding nonrenewal and premium increase included with the policy or other evidence 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 that monthly premium reports and accompanying forms were filed in a timely manner.  
**AS 21.34.080 and .170, 3 AAC 25.090 and .100**

*Comments:* Five out of the 24 monthly reports were filed late. For those received after the regulations went into effect for penalties, the penalty was assessed and paid prior to the audit. Each monthly filing had the correct forms attached: monthly premium report summary and report of surplus lines transaction.

*Result:* Failed (19 reports passed & 5 failed, error rate 21%)

*Recommendation:* It is recommended that the broker follow their written procedures to ensure all monthly reports are filed on time. The due dates are included in the procedures.

**2. Verify the accuracy of the premium calculation**

**AS 21.34.180**

*Comments:* The premium was calculated correctly for every transaction in the audit files except for a multi-state policy that will be addressed separately.

*Result:* Passed (error rate 0%)

**3. Verify the accuracy of all monthly reports filed**

**AS 21.34.080 and .170, 3 AAC 25.090 and .100**

*Comments:* AMWINS has a computer system, AmLink, that is both the production system for recording the transactions and the invoicing system. Although they receive a daily report of all transactions (all states), when they are ready to prepare the monthly report, they run just the Alaska transactions filtering for the effective date of both policies and endorsements. Then they compare the report with the documents they received from the CSR (Consumer services representative) to ensure they have all the necessary information they need to prepare the reports. The CSR is contacted for more info as needed. The administrative staff manually prepare the Report of Surplus Lines Transaction and the Monthly Premium Report Summary to send to Alaska.

There were several different accuracy issues noted in the policies:

- 10 policies and endorsements were not filed in the correct month's report
- 3 original policies and 2 endorsements were not filed at all. Tax and fees are due on these five transactions (\$3,151.68 and \$1,167.29 respectively). The late filed transactions are each subject to a late penalty of \$750 for a total of \$3,750.
- 1 policy was not filled out correctly on the transaction report. Since a copy of the declaration was included, Alaska Division of Insurance staff fixed the report

The accuracy of the monthly reports affects two audit accuracy tests: tax reports and tax/fee payments.

*Result:* Failed (34 files passed & 16 failed, error rate 32%)

*Recommendations:* It is recommended that the broker follow their written procedures to ensure the policy transactions are being reported in the correct month. The broker must ensure all written transactions are being reported to the Alaska Division of Insurance. Following the written procedures will ensure all transactions are filed in the correct month. A review by a second individual might be considered in order to catch any mistakes before the paperwork is filed with the Division.

**4. Verify the multi-state placements are filed correctly and premium allocated correctly**

**AS 21.34.180**

*Comments:* There were 12 multi-state policies. The allocation of premium was accurately reported to Alaska other than the inspection fee allocated to Alaska for one policy. Either the



insurance company or the broker calculated the allocation portion using a reasonable method of allocation. One multi-state policy included an inspection fee that the insurance company identified as allocated to Alaska. This fee of \$400 was not included in the premium calculation when reported to the Alaska Division of Insurance. The tax and filing fee of \$10.80 and \$4.00 respectively are due on the inspection fee.

The accuracy of the premium calculation affects three audit accuracy tests: monthly reports, tax reports and tax/fee payments.

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

*Recommendation:* It is recommended that the broker follow their written procedures to ensure all company fees are included in the premium calculation.

**5. Verify quarterly and annual premium tax reports were filed in a timely manner**  
**AS 21.34.180, 3 AAC 21**

*Comments:* The broker was not required to file quarterly tax reports for 2006. The first quarter 2007 tax report was not filed by the deadline. It was due 5/31/07 but received on 6/11/07. The two annual premium tax reports were filed on time.

*Result:* Failed (5 reports passed & 1 failed, error rate 17%)

*Recommendation:* It is recommended that the broker follow their written procedures to ensure all tax reports are filed on time.

**6. Verify the accuracy of the quarterly and annual premium tax reports**  
**AS 21.34.180, 3 AAC 21**

*Comments:* The tax reports as filed were accurate. Twelve policies contributed to the tax reports not being filed accurately but were already addressed in other audit tests.

*Result:* Passed (error rate 0%)

**7. Verify if tax and filing fee payments were made on time and by ACH**  
**AS 21.34.180, 3 AAC 21**

*Comments:* The first and second quarter's tax payments in 2007 were made after the due date. Late payment penalties were assessed and paid prior to the audit. All payments were made by ACH.

*Results:* Failed (4 payments passed & 2 failed, error rate 33%)

*Recommendation:* It is recommended that the broker follow their written procedures to ensure the tax and fee payments are made on time.

**8. Verify tax and filing fees payments were made accurately**

**AS 21.34.180, 3 AAC 21**

*Comments:* The accuracy of the tax and fee payments is based entirely on the accuracy of the monthly reports and the tax reports. Although the tax and fees made during the two years were accurate based upon the tax reports as filed, during the audit, numerous inaccuracies were found which affected the accuracy of the tax and fee payments.

The correct tax and fees due after including the audit adjustments and reduced by payments received for each year are:

2006:

Surplus Lines Tax: \$15,941.77  
Annual Filing Fees: \$ 5,904.36  
Unauthorized Tax: \$ 22.80  
Late Filing Penalty: \$ 3,000.00  
Total: \$24,868.93  
Payments made: \$17,572.16  
**Difference: \$ 7,296.77**

2007:

Surplus Lines Tax: \$22,019.86  
Annual Filing Fees: \$ 8,155.51  
Late Pay Penalty: \$ 164.00  
Late Filing Penalty: \$ 1,500.00  
Total: \$31,839.37  
Payments made: \$31,052.37  
**Difference: \$ 787.00**

**Total tax and fees due \$8,083.77**

*Recommendation:* It is recommended that the broker revise their written procedures to ensure all monthly reports and tax reports are accurate as filed so that the tax and fee payments will be accurate. It is the request of the Division for the broker to make the tax, fee, and penalty payments due now by ACH.

*AMWINS Insurance Brokerage of CA response:* The additional tax, fees, and penalty payments were all made as required.

**9. Review effort made to place insured with an admitted insurer**

**AS 21.34.020, 3 AAC 25.030 and .035**

*Comments:* One file did not contain an affidavit of due diligence, which is the mode of documentation the broker has chosen to use to meet regulations. Nineteen files had an affidavit but it was not received by the broker by either email, fax or mail until after the effective date of the policy. The diligent search as required by statute must be documented before placement can

be made in the surplus lines market. On the late received affidavits, there was no documentation within the file of verbal discussions with the producers. Three files contained the affidavit but the declinations were not current and are not acceptable to document the diligent search of the admitted market. Three files included endorsements that added a full year to the policy but no diligent search of the admitted market prior the endorsements were documented.

*Results:* Failed (24 files passed & 26 failed, error rate 52%)

*Recommendations:* It is recommended that the broker revise their written procedures to include detailed information regarding the diligent search documentation requirements. First, the diligent search must be documented by the broker prior to binding in the surplus lines market. And second, when an endorsement extends a policy for a full year a new diligent search must be conducted. If the endorsement is for less than a year, AMWINS should consider the circumstances and the intent of the statute [to put coverage in admitted market for the protection of the insured if possible] when analyzing whether a new diligent search should be done. It is recommended the broker contact the Alaska Division of Insurance for guidance if there is a question. The Affidavit of Due Diligence form is no longer a required form. However, they can continue requiring the retailers to use it as the documentation if they choose.

**10. Review disclosures on evidence of insurance for use of non-admitted insurer**

**AS 21.34.100(e)**

*Comments:* Forty-five policies had stamps that were not on the evidence of insurance or illegible.

Of the 45 policies the following problems were noted:

- 4 stamps on declarations and binders were illegible
- 12 stamps were not on the first page of the declarations or binder or were buried within the policy
- 2 binders stated Alaska had no special language
- 17 binders did not have the stamp
- 26 confirmations of coverage or cover notes did not have the stamp
- 6 endorsements did not have the stamp

*Results:* Failed (5 files passed & 45 failed, error rate 90%)

*Recommendations:* It is recommended that the broker revise their written procedures to ensure all staff stamp evidence of insurance legibly on the first page with the required language in AS 21.34.100(e). This includes all policies, binders, confirmation of coverage, cover notes, certificates, endorsements, and other evidence of insurance. When a multi-state policy includes a full page of stamps from each state, it is recommended this page be placed immediately after the declarations so as not to be missed.

**11. Review notification for use of non-admitted insurer**

**AS 21.34.110**

*Comments:* Twenty-six policy files did not include any documentation that the broker informed the insured that the company the coverage would be placed with does not hold a certificate of

authority, is not subject to the supervision of the division and in the event of insolvency of the insurer, losses will not be covered under AS 21.80 (Alaska Insurance Guaranty Association Act).

There were quotes in some files that did include language to this effect, so they were aware of the requirement.

*Results:* Failed (24 files passed & 26 failed, error rate 52%)

*Recommendations:* It is recommended that the broker revise their written procedures to include the notification as required by AS 21.34.110 on documents provided to the insured before the insured is invoiced. The placement is not binding on the insured and premium is not due and payable until this notification is provided to the insured.

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

**AS 21.34.050**

*Comments:* One policy was written with a company that was not eligible at the time of the placement. The broker was sent a letter asking that the policy be replaced with an eligible company but since 1.3% of the risk was located in Alaska, the decision was made by the broker to not replace and they filed the unauthorized tax forms to reflect that decision.

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

*Recommendations:* It is recommended that the broker ensure their written procedures for the insurer to be on the Eligible Surplus Lines Insurers list are followed before making a placement. This requirement is for the insured's protection. The broker should comply with AS 21.34.060 and 3 AAC 25.010 if coverage must be placed with an ineligible insurer.

**13. Review notice regarding nonrenewal and premium increase**

**3 AAC 25.050**

*Comments:* Twenty-seven policies did not include the required notice regarding nonrenewal and premium increase. There were 12 policies that had a notice as part of the policy but it was old language and made inaccurate statutory references.

*Results:* Failed (23 files passed & 27 failed, error rate 54%)

*Recommendations:* It is recommended that the broker revise their written procedures to include a step in the policy review to ensure the required notification is attached to the policy. They need to contact the insurance company when the correct notice is not part of the policy.

## SUMMARY AND SUBSEQUENT EVENTS

### Summary

This was a premium tax audit of AMWINS Insurance Brokerage of CA. The auditor tested 13 standards focusing on the broker's filing of monthly and annual tax reports and the subsequent payment of premium taxes and filing fees, as well as due diligence and notification requirements for using a non-admitted insurer.

The compliance officer and staff were very cooperative during the audit. The tax auditor appreciated this attitude and enjoyed working with AMWINS Insurance Brokerage of CA's management and staff.

Several significant issues did arise during the audit.

- 1) There were numerous reports and payments made late, often generating penalties
- 2) Five transactions were not filed with the Division, which will generate penalties and additional taxes and fees to be paid.
- 3) The required notification to the insured regarding the use of a nonadmitted insurer was found in less than 50% of the files.
- 4) The required stamps were not located on many evidence of insurance
- 5) The diligent search in the admitted market first was not documented in many of the files. Of those that were documented, many were received after binding.

*AMWINS Insurance Brokerage of California response May 15, 2009:* the report was educational in identifying key areas in which we need to address procedures to ensure compliance with the state's due diligence and documentation requirements. New procedures for the filing of premium/tax reports and payments were implemented last year in January 2008 and those procedures have addressed the reporting deficiencies noted in your report for the two year audit period (2006 – 2007).

### Re-Audit

In closing, the auditor's recommended actions should help the broker correct the problems encountered. It is recommended that AMWINS Insurance Brokerage of CA be re-audited within the next three years to ascertain compliance.

Submitted by:  
Rebecca Nesheim  
Tax Auditor

Affidavit

AMWINS Insurance Brokerage of CA  
As of December 31, 2007  
TA 08-04

Juneau, Alaska )  
June 25, 2009 )  
State of Alaska ) ss.  
First Judicial District )

I, being duly sworn, do verify that the report of premium tax audit as of December 31, 2007 of AMWINS Insurance Brokerage of CA is true to the best of my knowledge and belief.

*Rebecca Nesheim*

Rebecca Nesheim  
Tax Auditor

SUBSCRIBED and SWORN to before me this 29<sup>th</sup> day of June, 2009

*Stacie L. Estevez*  
Notary Public in and for Alaska

My Commission Expires with office

