



FEMA

W-08042

June 30, 2008

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators
and the NFIP Servicing Agent

FROM: WYO Clearinghouse

REF: WYO Clearinghouse Bulletin W-08032

SUBJECT: Letter to Municipal Association of South Carolina

Attached is a copy of a letter from the Federal Insurance Administrator to the Municipal Association of South Carolina, informing them that WYO companies are not liable for or authorized to pay certain taxes in South Carolina on policies written under the National Flood Insurance Program. An earlier Clearinghouse Bulletin, W-08032 dated May 23, 2008, stated FEMA's intent to inform relevant jurisdictions of this decision.

Please share this information within your organization as appropriate.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: Accounting, Legal, Marketing



FEMA

Mr. Howard Duvall
Executive Director
Municipal Association of South Carolina
Post Office Box 12109
Columbia, South Carolina 29211

Dear Mr. Duvall:

This letter is in regard to the taxes levied by the Municipal Association of South Carolina (MASC) on insurance policies written under the National Flood Insurance Program (NFIP). Under the Arrangement between the Federal Emergency Management Agency (FEMA) and private insurance companies participating in the NFIP's Write-Your-Own (WYO) Program, companies sell and service NFIP policies under their own name. These policies are underwritten by the Federal government, and pursuant to the U.S. Code and Federal Regulations, the premiums collected as payment for coverage under these policies are Federal dollars which are deposited into a National Flood Insurance Policy Restricted Account, and which may not be comingled with the insurance company's own funds. Because these funds belong to the United States Government, the insurance company that is the fiduciary agent for the restricted account may not collect interest on the Federal Funds. Similarly, because these collected premium funds belong to the Federal Government, they are not subject to State or local taxation except by consent.

FEMA has consented to a single exception to this legal principle and, since the inception of the WYO Program, agreed to voluntarily pay State premium taxes on NFIP premiums in recognition of the service provided by State insurance departments in overseeing the solvency and regulating the conduct of WYO Companies, as well as the conduct and qualifications of agents and adjusters who work on flood insurance policies under the NFIP. By contrast, local jurisdictions on whose behalf MASC seeks to collect these taxes, provide no services or benefits to the NFIP. Any services or benefits the local governments provide to agents or companies operating within their jurisdictions would be taxed through a business, real estate, or gross receipts tax on the receipts that actually belong to the company, not Federal funds in a restricted account.

Article III, Paragraph A, of the WYO Arrangement provides for the payment of State premium taxes by the companies, and reimbursement by FEMA for such expenses, but specifically excludes reimbursement for "other taxes or fees, such as surcharges on flood insurance premium and guaranty fund assessments." The intent of this provision, and the other applicable legislative and regulatory provisions, is to articulate clearly that FEMA's voluntary consent to paying State premium taxes in exchange for the regulatory and oversight services provided by the State Insurance Commission, does not invalidate the Federal Government exemption from any taxes or assessments levied by any other level of government. Accordingly, the WYO companies are not liable for or authorized to pay any taxes and assessments levied on Federal flood premiums not provided for under the Arrangement. This includes taxes levied on NFIP premiums by MASC.

Mr. Howard Duvall

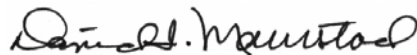
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I note that in an electronic mail message (email) from MASC's counsel for collections, she asserts that the U.S. District Court's ruling on a motion for summary judgment in the matter of *MASC v. Omaha Property and Casualty Insurance Company* provides authority for MASC to collect these taxes. As you know, the case never went to trial and no decision was made by the Court on the merits. The matter was settled as the "full and final accord and release of the Lawsuit." Once the matter was settled, the Court's Order from the summary judgment motion was of no further efficacy, is not binding on FEMA or any other party, and sets no precedent in favor of MASC's current attempts to levy taxes on Federal funds. It is improper for MASC to assert otherwise.

Moreover, as a part of the settlement, MASC agreed that any payments made pursuant to that settlement were not to be construed as an admission of liability for the taxes. MASC's assertion that the Order has any binding authority whatsoever runs contrary to MASC's agreement that there was no admission of liability for the taxes.

Therefore, we have sent a memorandum to all WYO Companies directing them not to pay such taxes in South Carolina or in any other jurisdiction where such assessments are made. If you have any questions on this matter, please contact Dennis Kuhns by telephone at (703) 605-0429.

Sincerely,



David I. Maurstad
Federal Insurance Administrator
National Flood Insurance Program

cc: WYO Companies
Major P. May, Regional Administrator, FEMA Region IV