

Bulletin 194

Measuring the loss: inclusion of sales tax in total loss settlements

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The Bureau's Consumer Division periodically fields complaints from insureds whose insurers refuse to include sales tax in their assessment of the actual cash value of insured personal property deemed to be a total loss. The Maine Insurance Code specifically addresses the insurer's obligation to include sales tax in the assessment of loss with regard to motor vehicles in 24-A M.R.S.A. Section 2907, Coverage For Sales Tax Credit. Some insurers argue that because the Code specifically addresses the issue only with regard to motor vehicle insurance, no such requirement exists for contracts of insurance covering other types of personal property.

The Bureau's position embraces the fundamental principle of indemnity that the function of insurance is to make whole the insured who has suffered a covered loss. Where a covered total loss has occurred and the insurer elects to make a cash settlement, an insured whose insurance contract specifies that the insurer will pay the value of the covered property, is entitled to the amount of money that would be required to purchase a property of like kind and quality. Where such purchase cannot legally be made without paying sales tax, the final purchase price necessarily includes sales tax. Accordingly, where a covered total loss has occurred and the insurer elects to make a cash settlement on the loss, the cash settlement must include sales tax.

The argument is occasionally raised that sales tax should not be included in a total cash settlement where the insured has decided not to replace the property insured. The Bureau rejects this reasoning. Whether or not the insured intends to replace the lost property is irrelevant to the measure of the loss.

Jeri E. Brown
Acting Superintendent of Insurance

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