



PUBLIC PROTECTION CABINET

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HB 524 Implementation Update

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The purpose of this document is to provide insurance companies and surplus lines brokers with guidance for implementing HB 524, related to local government premium taxes, as codified in KRS 91A.080 – 91A.0812.

KRS 91A.0810 (HB 524 Section 7) – Disclosure Requirements

Please note: The Department of Insurance filed emergency regulation, 806 KAR 2:092E, clarifying the disclosure requirements set forth in KRS 91A.0810. The emergency regulation was effective on August 14, 2008. An identical ordinary regulation was also filed on August 14, 2008 and is currently proceeding through the promulgation process.

General Questions

1. Are surplus lines brokers required to comply with the disclosure requirements?

No. KRS 304.10-180 requires surplus lines brokers to pay specific taxes including local government premium taxes. This statute was amended by HB 524 Section 6 to subject brokers to “the provisions of this section and KRS 91A.080 and 91A.0802 to 91A.0808 as an insurance company.” As the disclosure requirements of KRS 91A.0810 were not specifically included, surplus lines brokers are not required to comply with these requirements.

One-Time Notice

1. Which “current policyholders” are required to receive a one-time notice?

806 KAR 2:092E Section 2(1) requires an insurance company to provide the one-time notice to each policyholder who had a policy in effect on July 15, 2008, even if they are no longer active policyholders. Insurers are not required to send a notice to policyholders who were first insured after July 15, 2008 or to policyholders who terminated policies prior to July 15, 2008.

2. If a policyholder is insured by more than one insurance company within a group of companies, can the parent company send one notice instead of each company sending multiple, identical notices?

KRS 91A.0810(2) requires each insurance company to send the notice. However, 806 KAR 2:092E Section 2(2) allows an insurance company to send one notice to a policyholder who is insured under more than one policy with the same insurer. Therefore, the Department believes it would be acceptable for the parent company to issue one notice if that notices clearly identifies the names of all insurance companies within the group.

3. Can specific contact information be added to the notice language found in Section 2(1) of 806 KAR 2:092E?

Yes, contact information may be added to the notice. However, the specific language of the notice cannot be amended.

4. If an insurer does not pass the tax along to the policyholder, does the one-time notice need to be sent?

Yes. KRS 91A.0810 does not include any exceptions to the notification requirement. Therefore, the notice is required to be sent to all policyholders who had a policy in effect on July 15, 2008. Please note that the language of the one-time notice, as set forth in 806 KAR 2:092E Section 2(1) is intended to provide transparency of the existence of the tax and does not specifically state that an insurance company has charged the tax to the policyholder.

However, the Department believes that this statute must be read in concert with KRS 91A.080(10), which lists specific lines of insurance that are not taxable.

Insurance companies do not need to provide a one-time notice to policyholders whose policy relates to a non-taxable line.

5. Does the one-time notice need to be filed with the Department for approval?

No. Because the specific notice language that must be sent is provided in 806 KAR 2:092E Section 2(1), the language does not need to be filed with the Department for approval.

Future Disclosure

1. Does the future disclosure requirement in KRS 91A.0810((1) [HB 524 Section 7(1)] apply to policies for which the renewal notice is sent on or after December 31, 2008 or for policies that will renew on or after December 31, 2008?

The requirement applies to policies for which the renewal notice is sent on or after December 31, 2008.

2. Does a new disclosure of the tax need to be made every time a change or amendment is made to the policy?

KRS 91A.0810(1) and 806 KAR 2:092E Section 3 require an insurance company to itemize both the tax paid and the taxing jurisdiction on either the renewal certificate or the billing. The insurer may elect on which document it chooses to disclose the tax. If the billing document is chosen, the disclosure must be made any time for which premium or additional premium is charged to the policyholder. For a mid-term change, the insurance company is only required to list taxing amounts and taxing jurisdictions that are impacted by the change. If the renewal document is chosen, the disclosure must be made at renewal, but is not required to be made for mid-term policy changes.

3. Are insurance companies required to disclose the tax amount and taxing jurisdiction on new business issued on and after December 31, 2008 or does the disclosure requirement only apply to renewal business?

The tax must be disclosed on new business and renewal business. The Department believes that the intent of KRS 91A.0810 is to ensure that, beginning

December 31, 2008, policyholders are made aware that their premium includes a local government premium tax and, further, are made aware of the jurisdiction receiving the tax. Therefore, the tax and taxing jurisdiction must be disclosed at the time of policy issuance (on either the policy or initial billing) and at policy renewal (on either the renewal certificate or billing.)

4. Do changes made to renewal notices or billings to accommodate the disclosure requirements need to be filed with the Department for approval?

No. These documents do not need to be filed with the Department for prior approval.

**KRS 91A.0804(3) [HB 524 Section 2(3)] –
Policyholder Requests for Refund or Credit**

1. KRS 91A.0804(3) outlines the requirements for a policyholder to request a refund or credit and specifically require the request to be made in writing. If a policyholder contacts the insurance company by phone and the company notes an error, can the company take corrective action without the policyholder requesting a refund or credit in writing?

Yes, however inquiries made by telephone do not trigger the formal appeals process set forth in KRS 91A.0804(3). An insurance company should notify the policyholder of his or her rights under KRS 91A.0804(3), even if the insurance company believes the inquiry has been resolved. Further, if a policyholder contacts an insurance company as a result of the one-time notice, the company is required to comply with KRS 91A.0810(3) by sending the full text of 91A.0804(3) to inform the policy holder of the procedural requirements.

2. KRS 91A.0804(3)(b) requires a policyholder's request for a refund or credit to include the amount of overpayment of license fee or tax that was erroneously paid. Can the insurance company continue to research and resolve the potential overpayment without receiving the exact amount of overpayment from the policyholder?

Yes. While the request for refund or credit must include an amount of license fee or tax that was erroneously paid, this may be an estimated amount based upon the amount the policyholder believes was erroneous. The insurance company has an opportunity to dispute the amount of the refund or credit requested.