



PUBLIC PROTECTION CABINET

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HB 524 Implementation Update **February 20, 2009**

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

KRS 91A.0804 (HB 524 Section 2) – Requests to a Local Government for a Refund or Credit of an Overpayment of a Licensee Fee or Tax

This implementation update is being issued to address inquiries received by the Department of Insurance regarding the application of KRS 91A.0804 to situations involving refunds of unearned premium.

KRS 91A.0804(2) permits an insurer to make a request to a local government for a refund or credit of an overpayment of a license fee or tax by mailing an amended return and supporting documentation to the local government. Further, an insurance company is prohibited from applying a credit to taxes or fees without written agreement from the local government or an order or administrative ruling from the Department of Insurance. The Department believes that this statute is intended to apply specifically to errors made in accurately collecting and remitting a license fee or tax to a local government.

Situations may arise in which an insurance policy is canceled within the calendar quarter, and the insurance company is required to refund any unearned premium and license fee or tax to the policyholder. [KRS 91A.080(3)]. A return premium endorsement in a policy may also require an insurance company to return premium and the license fee or tax to a policyholder. The Department

does not believe that the process outlined in KRS 91A.0804(2) is applicable to these situations. Refunds of unearned premium and the corresponding license fee or tax are not “overpayments” of a license fee or tax made to correct errors. Rather, in these situations, insurance companies are returning to a policyholder that portion of the premium and tax that is unearned.

An insurance company is required by KRS 91A.080(3) to reflect a refund of unearned premium as a credit on its next quarterly return. Therefore, the Department does recognize the difficulty that a local government may have in distinguishing between overpayments and refunds. To avoid confusion, we would encourage insurance companies to provide an explanation of any refunds noted as a negative premium on a quarterly return in a cover letter accompanying the quarterly return. A local government who has a question concerning a negative premium noted on a quarterly return may want to contact the insurance company to clarify whether the negative premium is the result of a refund of unearned premium or a correction to a previous tax payment.