

Local Premium Tax Advisory Council

August 11, 2015 ~ 1:30 pm

Department of Insurance ~ Hearing Room

Minutes

Members Present

Commissioner Sharon Clark

Huston Wells

Greg Kosse

Mark Treesh

Beth Murphy

JD Chaney

Stan Logan

Members Absent

JT Fulkerson

Shellie Hampton

Call to Order / Roll Call / Welcome ~

Commissioner Clark called the meeting to order and the roll was called. A quorum was present.

Approval of Minutes ~

There was discussion regarding the new business section of the minutes and whether the DOI had a position on the issue of taxes applying to a policy where the policyholder is a charitable, non-profit entity or an educational institution or whether members were being asked to help form a position. It was clarified that the DOI has a current position, as stated in the minutes, but the issue has been raised multiple times through inquiries. Therefore, DOI has asked members to re-visit the issue to affirm that the DOI's position remain correct.

The minutes for the May 5, 2015 meeting were approved as drafted.

Subcommittee Report ~

Clarify credit on quarterly statement

Members: JD Chaney, Shellie Hampton, Mark Treesh, and Beth Murphy

The subcommittee met and continues to work on a solution. The issues that are being discussed include how long a credit can be carried forward and the appropriate timeframe in which to pay a refund. All members of the subcommittee agree that carrying a credit forward indefinitely is unfair. It was requested that a monetary threshold be considered.

Should a consensus on a solution be reached, the subcommittee will consider filing legislation in a separate bill rather than including the issue in DOI agency legislation.

Old Business ~

Filing of Annual Reconciliation

An update was provided on the filing of the annual reconciliation statements due on March 31 of each year.

There has been no change from the previous meeting regarding the insurance company and surplus lines brokers who have not filed 2013 annual reconciliation statements. As such, the 2013 non-filers will be referred to the DOI's Legal Division.

A civil penalty of \$1,000 per insurance company and \$500 per surplus lines broker will be imposed. If the non-filer also did not comply in 2012, the penalty will be doubled.

Further, it was noted that some of the surplus lines brokers that have not filed do not have an active license. In those situations, the DOI makes a note in the licensing file. Should the surplus lines broker apply to be re-licensed, he or she will need to pay the penalty before the license will be issued.

For the 2014 annual reconciliations, 90 insurance companies and 28 brokers have not filed.

Application of Tax on Installment Fees

This issue of whether a service fee is included in premium and, therefore, subject to local government premium tax is being considered in an administrative hearing on an appeal of a finding in a market conduct exam by Foremost Insurance Company. The hearing is scheduled for October 22 and 23 at the Department of Insurance. The hearing is open to the public, but the only the parties to the hearing can provide testimony.

A member asked whether a local government would owe refunds if the decision was made that installment fees are not part of premium. That will be determined by the ruling, but it was noted that KRS 91A.0804 requires all requests for refunds or credits to be made within two years of the due date of the annual reconciliation.

New Business ~

During the previous meeting, the DOI noted that it had been receiving questions regarding whether local government premium taxes can be applied on policies where the policyholder is a charitable, non-profit entity or an educational institution. Members were asked to gather additional information from their constituencies for a discussion during the August meeting.

Commissioner Clark opened the discussion by noting that the Department's current position is based on a 1984 Attorney General Opinion. She asked whether it would be appropriate to seek a new Attorney General Opinion on this issue.

Mark Treesh reported that he had discussed the issue with the members of the Insurance Institute of Kentucky. None grant an exemption from the tax for policyholders who are non-profit charitable entities unless there is a specific exemption through a local ordinance.

It was also noted that there is no specific statutory exemption from the tax for charitable, non-profit entities or educational institutions. Section 170 of the Kentucky Constitution exempts certain property from taxation. However, in *Children's Psychiatric Hospital of Northern Kentucky, Inc. v. Revenue Cabinet, Commonwealth of Kentucky*, the Kentucky Supreme Court held that this section only applies to property ad valorem taxes and therefore does not exempt charitable institutions from other taxes. Based on this decision, it is believed that Section 170 of the Kentucky Constitution would not apply to local government premium taxes and, absent a provision in a local ordinance, the tax could be passed on to the policyholder.

Before additional action is taken, the DOI agreed to review the case to determine whether it is dispositive of the issue and potentially issue a clarification regarding this issue.

Suggested Next Meeting ~

The next meeting will be October 27, 2015 at 1:30 pm in the Hearing Room at the Department of Insurance.

Adjourn ~

Commissioner Clark adjourned the meeting.

Submitted By:

Date

Approved By:

Date