

Local Premium Tax Advisory Council

October 27, 2015 ~ 1:30 pm

Department of Insurance ~ Hearing Room

Minutes

Members Present

Commissioner Sharon Clark
JD Chaney
Steve Dawson
Shellie Hampton
Stan Logan
Paula Smith, proxy for Greg Kosse
Beth Murphy (phone)
Mark Treesh

Members Absent

Huston Wells

Call to Order / Roll Call / Welcome ~

Commissioner Clark called the meeting to order and the roll was called. Steve Dawson, Finance Director, City of Frankfort, was introduced as a new member. A quorum was present.

Approval of Minutes ~

The minutes for the August 11, 2015 meeting were approved as drafted.

Subcommittee Report ~

- a. Clarify credit on quarterly statement
Members: JD Chaney, Shellie Hampton, Mark Treesh, and Beth Murphy

As background on the issue, KRS 91A.080(3) requires that a credit for unearned premium be taken on the next quarterly statement rather than having a local government issue a refund check for an overpayment. There are occasions where the credit is carried for numerous quarters because the insurer does not have any taxes owed to that local government on which to base the credit. The subcommittee is considering whether statutory changes need to be made to allow options for the return of the overpayment.

The subcommittee reported that work on this issue and a draft legislative proposal is continuing. A meeting is scheduled for the week of November 2, 2015 to discuss a draft proposal to address the issue which was characterized as a “simple issue with a complex solution.”

Old Business ~

Filing of Annual Reconciliation

Information was provided on the annual reconciliation filings for calendar year 2014 (which were due March 31, 2015.) At the time of the meeting, there were 84 insurance companies and 25 surplus lines brokers that have not filed their required annual reconciliation. The DOI's process is to provide two follow-up contacts to the non-filers. If the annual reconciliation is still not filed, the matter will be referred to the Office of Legal Services for appropriate action.

Application of Tax on Installment Fees

The 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 was rescheduled to February 2 and 3.

Ordinances

The DOI reminded the members that KRS 91A.080 sets a specific deadline of 100 days prior to July 1 (March 23, 2016) for a local government to file a new or amended ordinance. This deadline is strictly observed. It was noted that KLC and KACo both send reminders to their members regarding this deadline.

Charitable Entities

During the May 11, 2015 and August 11, 2015 meetings, 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.

At the August meeting, it was 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. The DOI agreed to review the case to determine whether it is dispositive of the issue.

After review, the DOI believes that case law is dispositive of the issue. A motion was made that it is the position of the Local Government Premium Tax Advisory Council that there is no exemption from local government premium taxes under Section 170 of the Kentucky Constitution for policies in which the policyholder is a charitable, non-profit entity or an educational institution. However, a local government could adopt such an exemption through a local ordinance. The motion was unanimously approved.

During the discussion on this topic, the need for standard exclusions in ordinances was raised. It was shared that the council previously approved a model ordinance for voluntary use by local governments that helps to bring uniformity to the exclusions. The language is available on DOI's website. We are happy to share the model with KLC and KACo for distribution to their members to encourage uniformity.

New Business ~

There was no new business.

Suggested Next Meeting ~

The next meeting will be Tuesday, May 10, 2016 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