

1 AN ACT relating to credit balances for insurers.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 91A.0804 is amended to read as follows:

- 4 (1) The provisions of this section shall provide the sole and exclusive method for the
5 filing of amended returns and requests or assessments by any insurance company,
6 local government, or policyholder for nonpayment, underpayment, or overpayment
7 of any license fees or taxes imposed pursuant to KRS 91A.080 and the appeals from
8 the denial or refusal thereof.
- 9 (2) ~~[For tax periods beginning after December 31, 2008,]~~ All amended returns, requests
10 for refunds or credits, and assessments shall be made within two (2) years of the due
11 date of the annual reconciliation provided for in KRS 91A.080(8) for the tax period
12 during which the error was made, except that in the case of fraudulent failure to file
13 a return or the filing of a fraudulent return, the underpayment may be assessed at
14 any time.~~[The provisions of this subsection shall not apply to any refund or credit~~
15 ~~to an insurance company or policyholder or assessment by a local government that~~
16 ~~is affected by litigation pending on July 15, 2008.]~~
- 17 (3) (a) Any insurance company that has paid a license fee or tax imposed by a local
18 government pursuant to KRS 91A.080 may request a refund or credit for any
19 overpayment of a license fee or tax or any payment when no tax was due
20 within the time provided in subsection (2) of this section.
- 21 (b) A request for a refund or credit by an insurance company shall be made by
22 mailing an amended return and supporting documentation to the local
23 government to which the fee or tax was paid. A complete refund request shall
24 include the amended return and supporting documentation showing the total
25 amount of overpayment of license fee or tax that the insurance company
26 believes was erroneously paid and a breakdown of information for each policy
27 upon which a refund or credit is requested, including the location of the risk

1 by street address or, if a street address is unavailable, another appropriate
2 identifier of the physical location, the amount of the erroneous payment, the
3 premium charged, the amount of tax or fee actually collected, the type or types
4 of risk insured, and the period the policy was in force during the taxable year
5 or years.

6 (c) ~~[For refund and credit requests submitted for payments made during tax~~
7 ~~periods after December 31, 2009,]~~The insurance company shall produce
8 proof that it employed risk location systems or programs meeting the
9 requirements of KRS 91A.0806 during the time for which the refund or credit
10 is requested or a copy of a Department of Insurance order issued pursuant to
11 the administrative regulation promulgated under KRS 91A.0806(3). If the
12 insurance company fails or is unable to produce such proof or a copy of the
13 Department of Insurance order, the local government shall be entitled to keep
14 a penalty in the amount of ten percent (10%) of the refund or credit that would
15 have otherwise been due the insurance company. Any dispute regarding the
16 imposition of a penalty shall be resolved under paragraph (d) of this
17 subsection.

18 (d) **A local government shall notify the insurance company within ninety (90)**
19 **days whether or not an amended return or request for refund has been**
20 **accepted.** If a local government fails to accept the completed amended return
21 or refuses to issue the requested refund or credit within ninety (90) days of its
22 receipt, the insurance company may make application to the Department of
23 Insurance to review the claim. The application shall be filed with the
24 Department of Insurance within thirty (30) days of receipt of the response
25 from the local government or, in the case of a local government's failure to
26 respond, within thirty (30) days of the end of the ninety (90) day period
27 provided in this paragraph. The Department of Insurance shall, within sixty

1 (60) days of the receipt of the complete application, issue an order of final
2 agency action that the request for refund or credit is or is not warranted in
3 whole or in part. The commissioner of the Department of Insurance may grant
4 one (1) extension of thirty (30) days for the issuance of the order. As provided
5 in KRS 304.2-310, either party may file an administrative appeal from the
6 order of the Department of Insurance within sixty (60) days of the issuance of
7 the order.

8 (e) 1. After it has been determined that a refund or credit is owed, insurance
9 companies shall have a right to a full refund of a credit balance no
10 later than one (1) year after the latest of the following:

11 a. The due date of an original quarterly return;

12 b. The filing date of an original quarterly return; or

13 c. The filing date of an amended return.

14 2. A local government may require an insurance company to carry
15 forward a credit balance to subsequent quarters during this one (1)
16 year period, but shall not require an insurance company to carry
17 forward a credit balance past this one (1) year period. The credit
18 balance carried forward may be used to offset amounts that would
19 otherwise be due. The local government shall issue a refund of any
20 credit balance remaining after the carryforward to the insurance
21 company at the conclusion of the one (1) year period.

22 (f) If an insurance company submits an affidavit demonstrating that it is
23 unlikely the insurance company will write additional insurance policies in
24 the jurisdiction of the local government in the next twelve (12) month
25 period, refunds or credits for any overpayment of a license fee or tax or any
26 payment when no tax was due shall be distributed by the local government
27 according to the following schedule:

- 1 1. If the credit balance is ten percent (10%) or less of the total LGPT
2 revenue receipts of the local government for the most recent full fiscal
3 year, then the refund shall be issued within sixty (60) days of the due
4 date of the return for an original return or within sixty (60) days of the
5 filing date of an amended return. If an amended return has not been
6 accepted within the sixty (60) day period, the refund shall be issued no
7 later than thirty (30) days after the acceptance date, or after the
8 completion of the process described in paragraph (d) of this section,
9 whichever is later.
- 10 2. If the credit balance is greater than ten percent (10%) but less than or
11 equal to twenty-five percent (25%) of the total LGPT revenue receipts
12 of the local government for the most recent full fiscal year, then the
13 refund shall be issued within one hundred twenty (120) days of the
14 due date of the return for an original return or within one hundred
15 twenty (120) days of the filing date of an amended return.
- 16 3. If the credit balance is greater than twenty-five percent (25%) but less
17 than or equal to fifty percent (50%) of the total LGPT revenue receipts
18 of the local government for the most recent full fiscal year, then the
19 refund shall be issued within two hundred forty (240) days of the due
20 date of the return for an original return or within two hundred forty
21 (240) days of the filing date of an amended return.
- 22 4. If the credit balance is greater than fifty percent (50%) of the total
23 LGPT revenue receipts of the local government for the most recent
24 full fiscal year, then the local government may take the full one (1)
25 year period to issue the full refund, with at least one-half (1/2) of the
26 refund to be paid within two hundred forty (240) days and the other
27 half by the conclusion of the one (1) year period.

1 (g) A local government and an insurance company may enter into a written
2 agreement providing for an alternative payment plan.

3 (h) The total LGPT revenue received by the local government shall be
4 documented and certified by the local government if a tiered payment plan
5 is used under paragraph (f) of this subsection.

6 (i) No insurance company shall apply a credit to taxes or fees imposed by KRS
7 91A.080 without written agreement from the local government, without an
8 order of final agency action from the Department of Insurance order that the
9 refund is due, or without an administrative ruling from the Department of
10 Insurance order that a refund is due. Each violation of this paragraph shall be
11 punishable as provided in KRS 91A.080(7)(b) and (c).

12 (4) (a) Any policyholder who has paid to an insurance company a license fee or tax
13 imposed by a local government pursuant to KRS 91A.080 may request a
14 refund or credit for an overpayment of a license fee or tax or any payment
15 when no tax was due within the time provided in subsection (2) of this
16 section.

17 (b) A request for a refund or credit by a policyholder shall be made by mailing the
18 request to the insurance company to which the fee or tax was paid. The
19 request shall include the name of the policyholder, the address of the location
20 of the risk insured, the amount of overpayment of license fee or tax that was
21 erroneously paid, the dates of coverage, the amount of the fee or tax that was
22 paid, and the type of risk insured.

23 (c) If an insurance company fails to make payment or to grant credit to a
24 policyholder as requested within ninety (90) days of its receipt, the
25 policyholder may make application to the Department of Insurance to review
26 the request. The application shall be filed with the Department of Insurance
27 within thirty (30) days of receipt of the response from the insurance company

1 or, in the case of an insurance company's failure to respond, within thirty (30)
2 days of the end of the ninety (90) day period provided in this paragraph. The
3 Department of Insurance shall, within sixty (60) days of the receipt of the
4 complete application, issue an order of final agency action that the request for
5 refund or credit is or is not warranted in whole or in part. The commissioner
6 of the Department of Insurance may grant one (1) extension of thirty (30) days
7 for the issuance of the order. As provided in KRS 304.2-310, either party may
8 file an administrative appeal from the order of the Department of Insurance
9 within sixty (60) days of the issuance of the order.

10 (5) (a) If a local government has a reasonable basis to believe that a license fee or tax
11 imposed by it in accordance with KRS 91A.080 has not been paid or has been
12 underpaid, the local government shall request the Department of Insurance to
13 conduct an audit pursuant to the provisions of KRS 91A.080(7) within the
14 time provided in subsection (2) of this section.

15 (b) If the findings of the audit show that an insurance company did not pay or
16 underpaid the local government, the local government may send an
17 assessment by mail to the insurance company. The notice of assessment shall
18 state the total amount of payment due from the insurance company based upon
19 the findings of the audit conducted pursuant to KRS 91A.080(7), the
20 geographic area affected, and the applicable license fee or tax rate.

21 (c) The insurance company may respond to the assessment by either paying the
22 assessment in full within ninety (90) days of its receipt or by filing an appeal
23 of the findings of the audit and the assessment with the Department of
24 Insurance within ninety (90) days of the receipt of the assessment. An
25 insurance company appealing the audit findings and assessment shall make
26 application to the Department of Insurance and provide notice of the challenge
27 to the local government by certified mail. The Department of Insurance shall,

1 within sixty (60) days of the receipt of the completed application, issue an
2 order of final agency action upon the findings of the audit and a determination
3 that the assessment is or is not warranted in whole or in part. The
4 commissioner of the Department of Insurance may grant one (1) extension of
5 thirty (30) days for the issuance of the order. As provided in KRS 304.2-310,
6 either party may file an administrative appeal from the order of the
7 Department of Insurance within sixty (60) days of the issuance of the order.

8 (d) If the insurance company fails to make the full payment as requested by the
9 local government or fails to file an application of appeal with the Department
10 of Insurance within ninety (90) days of receipt of the assessment, the findings
11 of the audit and the assessment shall be deemed final, and the local
12 government may provide notification to the Department of Insurance to
13 impose a penalty in accordance with KRS 91A.080(7)(c). Any penalty
14 imposed because of an insurance company's failure to timely pay the
15 assessment shall be in addition to any penalties imposed as a result of the
16 audit. The notification shall be filed with the Department of Insurance within
17 thirty (30) days of the end of the ninety (90) day period provided in paragraph
18 (c) of this subsection. The Department of Insurance shall issue an order to the
19 insurance company to pay the assessment and any additional penalties
20 imposed within thirty (30) days of the order, or the Department of Insurance
21 may revoke the license of the insurance company under the provisions of KRS
22 91A.080(7) and KRS Chapter 304.

23 (e) The Department of Insurance may determine the scope of any audit requested
24 under this subsection and KRS 91A.080. Nothing in this chapter shall
25 preclude the Department of Insurance from exercising its discretion to conduct
26 an audit or examination of any insurance company under its authority as
27 otherwise provided in KRS Chapter 304.

- 1 (6) An administrative hearing held pursuant to this section shall be conducted pursuant
2 to KRS Chapter 13B. The hearing officer may compel any information necessary to
3 make a determination. Information concerning rates, the names and addresses as of
4 policyholders, and the expiration date of policies shall be proprietary and
5 confidential, shall not be divulged to any person or organization not a party to the
6 hearing, shall not be subject to disclosure or to the provisions of KRS 61.870 to
7 61.884, and the record shall be sealed at the conclusion of the hearing.
- 8 (7) (a) If a refund or credit is received by an insurance company that passed the fee or
9 tax on to the policyholder, and the amount refunded or credited is not owed to
10 another local government, the insurance company shall pass the full amount of
11 the refund or credit, including any collection fee that has been retained by the
12 insurance company pursuant to KRS 91A.080(4), on to the policyholder from
13 whom the fee or tax was collected within ninety (90) days of receipt of the
14 refund or credit.
- 15 (b) For a refund or credit received by an insurance company~~[for tax periods after~~
16 ~~December 31, 2009,]~~ that is not owed to another local government, the
17 insurance company shall pay a penalty fee of ten percent (10%) of the total
18 amount of the refund or credit due to the policyholder if the insurance
19 company is unable to produce proof of the use of a risk location system as
20 required under subsection (3)(c) of this section.
- 21 (c) *For all refunds or credits passed on to policyholders under this subsection,*
22 *the insurance company shall document that the refund or credit has been*
23 *passed on to the policyholder, including any collection fee or penalty, and*
24 *shall provide the documentation to the local government upon request by*
25 *the local government. The insurance company shall retain this*
26 *documentation for a period of two (2) years.*
- 27 (8) No legal action shall be filed by any party prior to the exhaustion of all

1 administrative remedies provided under this section.

2 (9) (a) Information on specific policies and policyholders provided to local
3 governments pursuant to subsection (3) of this section shall be considered
4 confidential and proprietary information of an insurance company and shall
5 not be disclosed or subject to disclosure under KRS 61.870 to 61.884. No
6 present or former official or employee of a local government or any other
7 person shall, intentionally and without authorization, inspect or divulge any
8 information acquired by him or her of the affairs of any insurance company, or
9 information regarding specific policies, policyholders, tax schedules, returns,
10 or reports required to be filed with a local government, or any information
11 produced by a hearing or investigation, insofar as the information may have to
12 do with the proprietary information of the insurance company. All county
13 judges/executive, mayors, local government legislative body members, and
14 local government employees whose duties include the fiscal affairs of their
15 local government, shall be deemed to have the necessary authorization to
16 inspect such information. Any person who violates the provisions of this
17 paragraph shall be guilty of a Class A misdemeanor for each offense and the
18 disclosure of information on each policyholder shall constitute a separate
19 offense.

20 (b) Except for local governments that have been certified by the Internal Revenue
21 Service or its agent as being in compliance with IRS safeguard requirements
22 and authorized to receive federal tax information, any proprietary information
23 provided to a local government for the purposes of compliance with
24 subsection (3) of this section and all copies or other records related to such
25 information shall be destroyed in an irreversible, secure, and confidential
26 manner in accordance with KRS 171.410 to 171.740 and the administrative
27 regulations promulgated or approved thereunder. A local government failing

1 to destroy proprietary information in accordance with this paragraph shall be
 2 subject to a civil penalty payable to the insurance company of five hundred
 3 dollars (\$500) for each offense, and the disclosure of information on each
 4 policyholder shall constitute a separate offense. An insurance company may
 5 commence a civil action in a court of competent jurisdiction for payment of
 6 the civil penalty. The total civil penalty shall not exceed ten thousand dollars
 7 (\$10,000) per incident.

8 (c) This subsection shall not preclude the disclosure of information to the
 9 Department of Insurance or to the legal representative of the local government
 10 for purposes of administrative hearings or legal appeals therefrom, nor shall it
 11 prohibit the local government from verifying the accuracy of the information
 12 with an individual policyholder to whom the information pertains.

13 (10) The filing of amended returns, requests for refunds or credits, assessments, and all
 14 applications and notification by any party to the Department of Insurance for review
 15 under this section, shall be sent to the designated party or parties by certified mail,
 16 return receipt requested.

17 ➔Section 2. KRS 91A.0802 is amended to read as follows:

18 As used in this chapter:

19 (1) **"LGPT" means the local government premiums tax authorized in KRS 91A.080.**

20 **(2)** "Local government" means a city, county, charter county, consolidated local
 21 government, urban-county government, or unified local government;

22 **(3)**~~(2)~~ "Risk location system or program" means any electronic software, hardware,
 23 or other technology verified by the Kentucky Department of Insurance under KRS
 24 91A.0806 used for locating risks that are subject to taxes or fees under KRS
 25 91A.080; and

26 **(4)**~~(3)~~ "Tax period" means a twelve (12) month period ending on December 31 of
 27 each year.