

Local Premium Tax Advisory Council

August 18, 2010 ~ 1:30 pm

Department of Insurance ~ Hearing Room

Minutes

Members Present

Commissioner Sharon Clark, Chair
Neil Hackworth
Mayor Will Cox
Rich Ornstein, proxy for Shellie Hampton
Rick Smith
Stan Logan
Paula Pabon, proxy for Greg Kosse
Prentice Harvey, proxy for Mike Lane
Mark Treesh

Call to Order / Roll Call / Welcome ~

Commissioner Clark called the meeting to order and the roll was called. A quorum was present. Rick Smith, Clark County Magistrate, was introduced as a new member of the advisory council representing county government.

Approval of Minutes ~

The minutes for the March 17, 2010 meeting were approved as drafted.

Subcommittee Reports ~

a. Risk Location Criteria: Neil Hackworth reported that the subcommittee had not met and noted that its primary responsibilities of drafting the regulation regarding verification of risk location systems and raising awareness of the need for local governments to have the correct boundaries filed with the Secretary of State's Office have been completed.

Russ Hamblen reported that the Commonwealth Office of Technology (COT) has 34 boundary filings in its backlog to digitize. It was also noted that COT does not have the boundary for the Urban Services District in Louisville for mapping.

Finally, it was noted that a statutory responsibility of the Advisory Council is to annually review the criteria for verification of risk location systems and make recommendations for updating and improving the verification criteria. This requirement will be discussed in more detail at the next meeting.

b. Due Diligence: Paula Pabon reported that the subcommittee had not met. It was noted that the primary focus of the subcommittee has been the development of the risk location chart, a chart that provides guidance in identifying the location of a risk based on a particular type of insurance. It was further noted that the issues regarding surety have

been resolved. The current risk location chart is available on the Department of Insurance website.

c. Data Collection: Mark Treesh reported that the subcommittee has not met. It was noted that the primary task of the subcommittee has to been to understand and facilitate how information regarding local government premium taxes flows between insurers, local governments and the Department. The development of an electronic annual reconciliation process was facilitated by this subcommittee. The process was utilized for the 2009 statements (which were filed with the Department in March 2010.)

Russ Hamblen reported that, at the time of the meeting, the Department had received filings from all but 200 entities. The electronic filing process has allows the Department to review the data, note errors, and work through corrections in a timely manner. (It was noted that at this time last year, the Department was still in the process of manually entering the data.) With regard to errors, there were approximately 400 filings in which math errors were noted. Many related to a minimum tax. All of those issues have been resolved. The Department is currently working on reconciling differences in the local government premium tax reported by surplus lines brokers on the surplus lines affidavits versus the annual reconciliation.

Another benefit of the electronic reconciliation process is that local governments have the ability to view their annual reconciliation through the Department's secure website. To date, fourteen (14) cities have established accounts to take advantage of the online data.

d. Education: Stan Logan reported that the subcommittee has not met. It was noted that the Kentucky League of Cities is having a conference next month and information regarding the tax may be shared, including encouraging the use of online information by cities.

e. Future Reforms: Prentice Harvey noted that through the continued collaboration of those represented on the advisory council, HB 278 was enacted during the 2010 Regular Session. This bill included technical changes to HB 524.

The subcommittee did hold a meeting to discuss next steps. The following issues were discussed:

- Clarification that the collection fee is in addition to the tax – The Advisory Council previously discussed that there was continued confusion as to whether the collection fee permitted by the statute is an amount collected in addition to the tax or an amount subtracted from the tax before it is remitted to the local government. This issue was considered for inclusion in HB 278, but it was determined that it would be better addressed through an administrative regulation. A draft administrative regulation was provided to the members for review and comment.
- Model ordinance – The variances in language in local ordinances establishing a local government premium tax make the intentions of the local government difficult to interpret and administer. Additionally, the Department frequently receives requests for a template from local governments wanting to adopt a new

local government premium tax. Therefore, the issue of development of a model ordinance was discussed. It is important to note that the focus of this issue is not to set a standard or uniform rate for a local government premium tax, but rather to establish commonality in wording.

- Tax on Life insurance – The application of taxes to life insurance, particularly the meaning of the statutory language that a tax may be based upon the first year’s premiums, was raised as an issue that needs clarification.
- Taxes on a policyholder who claims tax exempt status – Representatives of insurers met with the Department regarding this issue. The local government premium tax is a tax imposed on an insurance company (or a surplus lines broker.) The insurance company has the right to pass the tax on to the policyholder. An issue has been raised in situations where the policyholder is claiming a tax exempt status (for example, instances in which the policyholder is a government agency.) In these situations, there is a difference of opinion as to whether the insurance company must pay the tax if it cannot be passed on to the policyholder. The Department’s position is that because the tax is a tax on the insurance company, and the insurance company is not tax exempt, the insurer is responsible for paying the tax.

Insurers have met with KLC to discuss this issue. The discussion has been tabled until September. It was noted that all parties understand the issue and are trying to work together to find a resolution. It was also noted that the tax may not have been collected and remitted in the past. However, recent awareness of the issue has increased collection and, therefore, increased revenue for local governments related to these types of policies.

Old Business ~

There was no old business to discuss.

New Business ~

The Department noted that it is expecting an audit request from a county. The request will be addressed in three phases:

1. Pursuant to KRS 91A.0804(4), the Department will consider if the county has a “reasonable basis” to believe that a tax imposed has not been paid or has been underpaid.
2. If a reasonable basis is established, an internal desk audit will be performed based on premium and taxes allocated by lines of business. (It was noted that the cost for this phase is \$1,000 per company audited.)
3. If concerns arise from the desk audit, the Department will conduct an on-site examination or, if the data is available electronically, a more detailed examination.

It was asked whether the audit will consist of all insurance companies doing business in the county or selected companies. The Department has requested that the county identify the selected companies it would like included in the audit.

Next Meeting ~

The Department will suggest three meeting dates and send out via e-mail to determine the next meeting date.

Adjourn ~

Commissioner Clark adjourned the meeting.

Submitted By:

Date

Approved By:

Date