

91A.0804 Exclusive remedy for adjustments relating to license fees or taxes imposed under KRS 91A.080.

- (1) The provisions of this section shall provide the sole and exclusive method for the filing of amended returns and requests or assessments by any insurance company, local government, or policyholder for nonpayment, underpayment, or overpayment of any license fees or taxes imposed pursuant to KRS 91A.080 and the appeals from the denial or refusal thereof.
- (2) For tax periods beginning after December 31, 2008, all amended returns, requests for refunds or credits, and assessments shall be made within two (2) years of the due date of the annual reconciliation provided for in KRS 91A.080(8) for the tax period during which the error was made, except that in the case of fraudulent failure to file a return or the filing of a fraudulent return, the underpayment may be assessed at any time. The provisions of this subsection shall not apply to any refund or credit to an insurance company or policyholder or assessment by a local government that is affected by litigation pending on July 15, 2008.
- (3)
 - (a) Any insurance company that has paid a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for any overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection (2) of this section.
 - (b) A request for a refund or credit by an insurance company shall be made by mailing an amended return and supporting documentation to the local government to which the fee or tax was paid. A complete refund request shall include the amended return and supporting documentation showing the total amount of overpayment of license fee or tax that the insurance company believes was erroneously paid and a breakdown of information for each policy upon which a refund or credit is requested, including the location of the risk by street address or, if a street address is unavailable, another appropriate identifier of the physical location, the amount of the erroneous payment, the premium charged, the amount of tax or fee actually collected, the type or types of risk insured, and the period the policy was in force during the taxable year or years.
 - (c) For refund and credit requests submitted for payments made during tax periods after December 31, 2009, the insurance company shall produce proof that it employed risk location systems or programs meeting the requirements of KRS 91A.0806 during the time for which the refund or credit is requested or a copy of a Department of Insurance order issued pursuant to the administrative regulation promulgated under KRS 91A.0806(3). If the insurance company fails or is unable to produce such proof or a copy of the Department of Insurance order, the local government shall be entitled to keep a penalty in the amount of ten percent (10%) of the refund or credit that would have otherwise been due the insurance company. Any dispute regarding the imposition of a penalty shall be resolved under paragraph (d) of this subsection.

- (d) If a local government fails to accept the completed amended return or refuses to issue the requested refund or credit within ninety (90) days of its receipt, the insurance company may make application to the Department of Insurance to review the claim. The application shall be filed with the Department of Insurance within thirty (30) days of receipt of the response from the local government or, in the case of a local government's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The Department of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The commissioner of the Department of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the Department of Insurance within sixty (60) days of the issuance of the order.
 - (e) No insurance company shall apply a credit to taxes or fees imposed by KRS 91A.080 without written agreement from the local government, without an order of final agency action from the Department of Insurance order that the refund is due, or without an administrative ruling from the Department of Insurance order that a refund is due. Each violation of this paragraph shall be punishable as provided in KRS 91A.080(7)(b) and (c).
- (4)
- (a) Any policyholder who has paid to an insurance company a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for an overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection (2) of this section.
 - (b) A request for a refund or credit by a policyholder shall be made by mailing the request to the insurance company to which the fee or tax was paid. The request shall include the name of the policyholder, the address of the location of the risk insured, the amount of overpayment of license fee or tax that was erroneously paid, the dates of coverage, the amount of the fee or tax that was paid, and the type of risk insured.
 - (c) If an insurance company fails to make payment or to grant credit to a policyholder as requested within ninety (90) days of its receipt, the policyholder may make application to the Department of Insurance to review the request. The application shall be filed with the Department of Insurance within thirty (30) days of receipt of the response from the insurance company or, in the case of an insurance company's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The Department of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The commissioner of the Department of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may

file an administrative appeal from the order of the Department of Insurance within sixty (60) days of the issuance of the order.

- (5) (a) If a local government has a reasonable basis to believe that a license fee or tax imposed by it in accordance with KRS 91A.080 has not been paid or has been underpaid, the local government shall request the Department of Insurance to conduct an audit pursuant to the provisions of KRS 91A.080(7) within the time provided in subsection (2) of this section.
- (b) If the findings of the audit show that an insurance company did not pay or underpaid the local government, the local government may send an assessment by mail to the insurance company. The notice of assessment shall state the total amount of payment due from the insurance company based upon the findings of the audit conducted pursuant to KRS 91A.080(7), the geographic area affected, and the applicable license fee or tax rate.
- (c) The insurance company may respond to the assessment by either paying the assessment in full within ninety (90) days of its receipt or by filing an appeal of the findings of the audit and the assessment with the Department of Insurance within ninety (90) days of the receipt of the assessment. An insurance company appealing the audit findings and assessment shall make application to the Department of Insurance and provide notice of the challenge to the local government by certified mail. The Department of Insurance shall, within sixty (60) days of the receipt of the completed application, issue an order of final agency action upon the findings of the audit and a determination that the assessment is or is not warranted in whole or in part. The commissioner of the Department of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the Department of Insurance within sixty (60) days of the issuance of the order.
- (d) If the insurance company fails to make the full payment as requested by the local government or fails to file an application of appeal with the Department of Insurance within ninety (90) days of receipt of the assessment, the findings of the audit and the assessment shall be deemed final, and the local government may provide notification to the Department of Insurance to impose a penalty in accordance with KRS 91A.080(7)(c). Any penalty imposed because of an insurance company's failure to timely pay the assessment shall be in addition to any penalties imposed as a result of the audit. The notification shall be filed with the Department of Insurance within thirty (30) days of the end of the ninety (90) day period provided in paragraph (c) of this subsection. The Department of Insurance shall issue an order to the insurance company to pay the assessment and any additional penalties imposed within thirty (30) days of the order, or the Department of Insurance may revoke the license of the insurance company under the provisions of KRS 91A.080(7) and KRS Chapter 304.
- (e) The Department of Insurance may determine the scope of any audit requested under this subsection and KRS 91A.080. Nothing in this chapter shall

preclude the Department of Insurance from exercising its discretion to conduct an audit or examination of any insurance company under its authority as otherwise provided in KRS Chapter 304.

- (6) An administrative hearing held pursuant to this section shall be conducted pursuant to KRS Chapter 13B. The hearing officer may compel any information necessary to make a determination. Information concerning rates, the names and addresses as of policyholders, and the expiration date of policies shall be proprietary and confidential, shall not be divulged to any person or organization not a party to the hearing, shall not be subject to disclosure or to the provisions of KRS 61.870 to 61.884, and the record shall be sealed at the conclusion of the hearing.
- (7) If a refund or credit is received by an insurance company that passed the fee or tax on to the policyholder, and the amount refunded or credited is not owed to another local government, the insurance company shall pass the full amount of the refund or credit, including any collection fee that has been retained by the insurance company pursuant to KRS 91A.080(4), on to the policyholder from whom the fee or tax was collected within ninety (90) days of receipt of the refund or credit. For a refund or credit received by an insurance company for tax periods after December 31, 2009, that is not owed to another local government, the insurance company shall pay a penalty fee of ten percent (10%) of the total amount of the refund or credit due to the policyholder if the insurance company is unable to produce proof of the use of a risk location system as required under subsection (3)(c) of this section.
- (8) No legal action shall be filed by any party prior to the exhaustion of all administrative remedies provided under this section.
- (9)
 - (a) Information on specific policies and policyholders provided to local governments pursuant to subsection (3) of this section shall be considered confidential and proprietary information of an insurance company and shall not be disclosed or subject to disclosure under KRS 61.870 to 61.884. No present or former official or employee of a local government or any other person shall, intentionally and without authorization, inspect or divulge any information acquired by him or her of the affairs of any insurance company, or information regarding specific policies, policyholders, tax schedules, returns, or reports required to be filed with a local government, or any information produced by a hearing or investigation, insofar as the information may have to do with the proprietary information of the insurance company. All county judges/executive, mayors, local government legislative body members, and local government employees whose duties include the fiscal affairs of their local government, shall be deemed to have the necessary authorization to inspect such information. Any person who violates the provisions of this paragraph shall be guilty of a Class A misdemeanor for each offense and the disclosure of information on each policyholder shall constitute a separate offense.
 - (b) Except for local governments that have been certified by the Internal Revenue Service or its agent as being in compliance with IRS safeguard requirements and authorized to receive federal tax information, any proprietary information

provided to a local government for the purposes of compliance with subsection (3) of this section and all copies or other records related to such information shall be destroyed in an irreversible, secure, and confidential manner in accordance with KRS 171.410 to 171.740 and the administrative regulations promulgated or approved thereunder. A local government failing to destroy proprietary information in accordance with this paragraph shall be subject to a civil penalty payable to the insurance company of five hundred dollars (\$500) for each offense, and the disclosure of information on each policyholder shall constitute a separate offense. An insurance company may commence a civil action in a court of competent jurisdiction for payment of the civil penalty. The total civil penalty shall not exceed ten thousand dollars (\$10,000) per incident.

- (c) This subsection shall not preclude the disclosure of information to the Department of Insurance or to the legal representative of the local government for purposes of administrative hearings or legal appeals therefrom, nor shall it prohibit the local government from verifying the accuracy of the information with an individual policyholder to whom the information pertains.
- (10) The filing of amended returns, requests for refunds or credits, assessments, and all applications and notification by any party to the Department of Insurance for review under this section, shall be sent to the designated party or parties by certified mail, return receipt requested.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 77, effective July 15, 2010; and ch. 165, sec. 1, effective July 15, 2010. -- Created 2008 Ky. Acts ch. 94, sec. 2, effective July 15, 2008.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 165, which do not appear to be in conflict and have been codified together.