

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Kathy J. Byron

2. **Bill Number** HB 2155

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Passed House and Senate

4. **Title** Insurance Premiums License Tax; Technical
Corrections for Administration

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

In 2011, the General Assembly enacted legislation that transferred administration of the Insurance Premiums License Tax from the State Corporation Commission ("SCC") to the Department of Taxation ("the Department"), effective for the 2013 taxable year. This bill would make several technical changes related to the administration of the Insurance Premiums License Tax by the Department. Specifically, this bill would continue the SCC's current practices by waiving penalty and interest for quarterly estimated payments made by surplus lines brokers and by clarifying that the Department would not pay interest on the refund of overpayments of the Insurance Premiums License Tax.

This bill would change the interest rate applied to underpayments by insurance companies so that it is consistent with the standard interest rate applied to other taxes administered by the Department. This bill would also create uniform payment and billing deadlines by increasing the time period within which a taxpayer would be required to pay additional amounts owed from 14 days to 30 days from the date of the notice.

This bill would clarify the authority for disclosing information to the other state agencies, including the disclosure of information to the SCC for purposes of administering the Insurance Premiums License Tax.

This bill would be effective for taxable years commencing on or after January 1, 2013.

This is an Executive bill.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact.** (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have no revenue impact.

The SCC does not currently provide refunds for overpayments of the Insurance Premiums License Tax until the fiscal year following the due date of the return. To avoid a significant shift in revenue, the Department will continue to maintain the refund procedures currently administered by the SCC, including waiting until the following fiscal year to issue refunds. The Insurance Premiums License Tax provisions of the Virginia Code do not require the payment of interest on refunds. However, the general provisions of the Code that govern the Department of Taxation require the payment of refund interest on the overpayment of any tax administered by the Department of Taxation. This bill would maintain the status quo by making an exception to this general provision for overpayments of the Insurance Premiums License Tax. In the absence of legislation, the payment of refund interest on overpayments of the Insurance Premiums License Tax would have a potentially significant revenue impact of approximately \$1.5 million annually.

9. Specific agency or political subdivisions affected:

Department of Taxation
State Corporation Commission

10. Technical amendment necessary: No.

11. Other comments:

Background

During the 2011 session, the General Assembly enacted legislation that transferred the administration of the Insurance Premiums License Tax from the SCC to the Department, effective for taxable years beginning on and after January 1, 2013. The 2011 legislation resulted from a recommendation of the Commission on Government Reform and Restructuring to facilitate the efficient collection and administration of taxes. Pursuant to this legislation, the Department is administering the license tax that is imposed on insurance companies and surplus lines brokers, beginning with Taxable Year 2013. The intent of the 2011 legislation was to change the agency that administers the Insurance Premiums License Tax.

Penalty and Interest Waiver for Surplus Lines Brokers

Under current law, surplus lines brokers are required to file quarterly reports and submit estimated payments, but the SCC does not charge penalties and interest on late quarterly payments by surplus lines brokers. However, *Va. Code* § 58.1-1812 requires that penalty

and interest apply to all taxes administered by the Department. Accordingly, without further action, surplus lines brokers would be subject to penalty and interest once the Department begins administering the tax. To maintain the status quo, the Tax Commissioner issued an order on June 11, 2012, that waives penalty and interest on quarterly payments made by surplus lines brokers.

Refund Interest

The SCC does not pay interest on overpayments of the Insurance Premiums License Tax. The general provisions set forth in *Va. Code* §§ 58.1-15 and 58.1-1833 require that interest be paid upon the overpayment of any tax administered by the Department at a rate that is equal to the federal overpayment for noncorporate taxpayers plus two percent. Because the Department is administering the Insurance Premiums License Tax in Taxable Year 2013, it will be required to pay interest on overpayments of the tax in the absence of additional legislation.

Insurance companies are required to file their annual reports by March 1. Under *Va. Code* §§ 58.1-2510 and 58.1-2531, refunds must be made, and a portion of the annual revenue generated by the Insurance Premiums License Tax must be transferred to the transportation trust fund, after the beginning of the following fiscal year. At the beginning of the fiscal year, there are insufficient funds in the revenue account to satisfy the amount of transfers and refunds due. As a result, the SCC has historically made refund payments in the following fiscal year after sufficient funds have been obtained from quarterly payments. Under current law, if the Department continues to issue refunds on this schedule, then the Department would be required to pay significant amounts of refund interest. Changing the current procedures to refund overpayments in the fiscal year when the return is filed would result in a significant shift in revenue from the earlier fiscal year to the later fiscal year.

Interest Rates for Late Estimated Payments

Current law sets forth two interest rates for late quarterly estimated payments made by insurance companies, depending on whether the company requests and is granted a payment extension. If an extension is granted, the SCC currently charges an interest rate of 0.75 percent per month. If no extension is granted, the company is charged an interest rate of 1 percent per month. These special interest rates apply until the filing deadline for the insurance companies' annual reports, when interest begins accruing at the standard interest rate.

Underpayments of other taxes administered by the Department are generally equal to an annual rate of interest equal the federal underpayment rate established pursuant to IRC § 6621(a)(2) plus two percent. This rate is computed on a quarterly basis and is published by the Department of Taxation. For the first quarter of 2013, the federal underpayment rate is 3 percent and the Virginia underpayment rate is 5 percent. There is no procedure for requesting an extension for estimated payments for other taxes administered by the Department and the same rate of interest generally applies to all underpayments.

Uniform Payment Deadlines

For other taxes administered by the Department, a taxpayer who owes additional tax has 30 days from the date of the notice of assessment to make a payment before additional penalties and interest accrue. If an insurance company or surplus lines broker owes

additional tax, it currently has 14 days from the date of the notice of assessment to make payment before additional penalties and interest accrue. This 14-day period is significantly shorter than the 30-day grace period allowed for other taxes administered by the Department.

Disclosure of Confidential Taxpayer Information

Under *Va. Code* § 58.1-3, the Tax Commissioner may not divulge tax information except in certain circumstances. Currently, the Tax Commissioner is authorized to provide information to other state agencies, but only to the extent authorized by law. *Va. Code* § 58.1-2532 allows the Department and the SCC to exchange information for purposes of the Insurance Premiums License Tax. However, there is no specific exception in *Va. Code* § 58.1-3

Proposed Legislation

This bill would make several technical changes related to the administration of the Insurance Premiums License Tax by the Department. Specifically, this bill would continue the SCC's current practices by waiving penalty and interest for quarterly estimated payments made by surplus lines brokers and by clarifying that the Department would not pay interest on the refund of overpayments of the Insurance Premiums License Tax. Both of these measures would maintain the status quo, rather than shifting the current policy for administering the tax. The first provision would simply codify the temporary administrative waiver for penalty and interest owed by surplus lines brokers on estimated payments. The second provision would continue the current practice of not paying refund interest on overpayments of the Insurance Premiums License Tax in order to avoid a significant revenue impact.

This bill would change the interest rate applied to underpayments by insurance companies so that it is consistent with the standard interest rate applied to other taxes administered by the Department. This would create uniformity in the administration of taxes.

This bill would also create uniform payment and billing deadlines by increasing the time period within which a taxpayer would be required to pay additional amounts owed from 14 days to 30 days from the date of the notice. Because the date of payment for payment transmitted via the postal service is the postmark date, rather than the date payment is received by the Department, payments mailed on or shortly before the existing due date may not be processed before an additional notice of assessment is mailed. Extending the payment period to 30 days decreases the number of additional computations of penalty and interest and the number of unnecessary notices of assessments issued by the Department. It could also reduce the number of customer services calls inquiring about bills received after payment has been made.

This bill would clarify the authority for disclosing information to the other state agencies by clarifying that the line of duty exception in *Va. Code* § 58.1-3 includes acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law. This exception would include the disclosure of information to the SCC for purposes of administering the Insurance Premiums License Tax.

This bill would be effective for taxable years commencing on or after January 1, 2013.

Similar Legislation

Senate Bill 1216 is identical to this bill.

Senate Bill 780 and **House Bill 1784** would change the Insurance Premiums License Tax rate for income generated by certain policies.

cc : Secretary of Finance

Date: 2/14/2013 KLC
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