

Updated Virginia Insurance Premiums License Tax Guidelines

***These Guidelines supersede the Virginia Insurance Premiums License Tax Guidelines issued by the Department on December 7, 2012 (Public Document 12-203).*

Introduction

During its 2011 session, the Virginia General Assembly enacted Senate Bill 1124 (2011 Acts of Assembly, Chapter 850), which transferred the administration of the Insurance Premiums License Tax from the State Corporation Commission (“SCC”) to the Department of Taxation (“the Department”). This transfer includes the processing of tax reports, the handling of payments and billing, customer service functions, collections, and certain auditing duties. The SCC’s Bureau of Insurance (“BOI”) will continue to be responsible for the licensing of insurance companies and the administration of the maintenance fund.

Certain provisions of the 2011 legislation mandate that declarations of estimated tax be made in accordance with guidelines prescribed by the Department. Accordingly, the Department has developed these guidelines, which explain the:

- Timing of the transfer of administration to the Department from the SCC and duties the SCC’s BOI will retain;
- Declarations of estimated tax made by taxpayers subject to the Insurance Premiums License Tax;
- Declarations of estimated tax and amendments to such declarations for insurance companies with a taxable year of less than 12 months; and
- Penalty and interest rules for the underpayment of estimated Insurance Premiums License Taxes.

In addition to the procedures regarding declarations of estimated taxes and estimated tax payments, these guidelines also explain the process for exchanging information between the Department and the SCC, as well as new procedures that will apply as a result of the transfer of the administration of the tax to the Department.

During the 2013 session, the Virginia General Assembly enacted House Bill 2155 (2013 Acts of Assembly, Chapter 29) and Senate Bill 1216 (2013 Acts of Assembly, Chapter 163), which made technical corrections to the Insurance Premiums License Tax. In part, the 2013 legislation make changes to the interest rate applied to underpayments of tax by insurance companies, the Insurance Premiums License Tax payment and billing deadlines, and the provisions for disclosure of information related to the Insurance Premiums License Tax.

These guidelines are issued by the Department to provide guidance to taxpayers regarding the change in administration of the Insurance Premiums License Tax. These

Updated Virginia Insurance Premiums License Tax Guidelines

guidelines are exempt from the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) and are being published in accordance with the Tax Commissioner's general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. These Guidelines supersede the Virginia Insurance Premiums License Tax Guidelines issued by the Department on December 7, 2012 (Public Document 12-203). As necessary, additional guidelines will be published and posted on the Department's website, www.tax.virginia.gov.

These guidelines represent the Department's interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provisions of these guidelines are contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

Timing of the Transfer of the Insurance Premiums License Tax

Effective for taxable years beginning on and after January 1, 2013, the administration of the Insurance Premiums License Tax will be transferred from the SCC's BOI to the Department. Responsibilities transferred to the Department include the processing of tax reports, the handling of related payments and billing, customer service functions, and all collections and auditing duties. Additionally, the Department will administer the retaliatory cost assessment on certain foreign insurance companies, as well as oversee the retaliatory costs tax credit for domestic insurance companies.

The BOI will continue to be responsible for the licensing of insurance companies. In the event that a taxpayer fails to pay the Insurance Premiums License Tax, the Department will notify the BOI, which may then suspend or revoke the insurer's license. The BOI will continue to administer the annual Maintenance, Fire, Flood, Fraud, and HEAT Fund assessments. All applicable taxpayers will continue to receive Maintenance, Fire, Flood, Fraud, and HEAT Fund assessments from the BOI after the transfer and will be responsible for making payments to the BOI for such assessments.

The Department will begin administering the Insurance Premiums License Tax for Taxable Year 2013. Taxpayers must file their annual Insurance Premiums License Tax reports for Taxable Year 2012 with the BOI by March 1, 2013. All subsequent tax reports, including declarations of estimated payments, will be filed with the Department. Insurance companies' first filing to the Department will be the first quarter estimated Insurance Premiums License Tax declaration, which is due April 15, 2013. Insurance companies must file annual tax reports for Taxable Year 2013 with the Department by March 1, 2014.

Updated Virginia Insurance Premiums License Tax Guidelines

Declarations of Estimated Tax

Any insurance company with an annual direct gross Insurance Premiums License Tax liability that is expected to exceed \$3,000 is required to file estimated payments throughout the year. This \$3,000 limitation is imposed after accounting for any applicable tax credits. Insurance companies must use Form 800ES to calculate estimated payments. This form provides instructions for calculating the amount of Insurance Premiums License Tax an insurance company should pay, as well as the amount and due dates for each estimated tax payment. Insurance companies may submit payments electronically via the Department's website at www.tax.virginia.gov.

Any insurance company with an annual direct gross Insurance Premiums License Tax liability that is not expected to exceed \$3,000, after all applicable credits have been utilized, is not required to file declarations of estimated Insurance Premiums License Tax for that year. Such a taxpayer would pay any Insurance Premiums License Tax with the annual tax report due March 1 of the year following the taxable year.

Penalty and Interest Provisions for Declarations of Estimated Tax

If an insurance company submits a declaration of estimated tax past its due date, interest will begin accruing on the unpaid balance at the rate set forth in *Va. Code* § 58.1-15. If the payment is not submitted by the due date of the annual tax report, the insurance company will be subject to a late payment penalty equal to ten percent of the amount of tax due. Additionally, any company that fails to file the annual tax report by the March 1 deadline will be subject to a penalty of \$50 per day.

Addition to Tax for Underpayment of Estimated Taxes

In addition to the interest that accrues on late estimated tax payments and the late filing and payment penalties that may be assessed, if an insurance company fails to pay the license tax by the due date of the annual tax report, interest will continue to accrue at the rate set forth in *Va. Code* § 58.1-15. For purposes of determining whether additional interest is due, the amount of the underpayment is equal to the amount of the installment that would be required to be paid if the estimated tax were equal to ninety percent of the tax ascertained for the license year, less the amount of the installment paid on or before the due date. The period of the underpayment runs from the date the installment was required to be paid to the earlier of:

- The first day of the third month following the close of the taxable year, or
- With respect to any portion of the underpayment, the date on which such portion is paid.

An insurance company can compute the amount of the underpayment and the addition to tax by completing Form 800C.

Updated Virginia Insurance Premiums License Tax Guidelines

Exceptions to the Addition to Tax

Pursuant to *Va. Code* § 58.1-2528, there are several exceptions to the addition to tax for the underpayment of an installment. Such addition to tax is not imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

- The tax as shown on the annual tax report for the preceding taxable year, so long as such tax was computed on the basis of a taxable year of twelve months.
- An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the annual tax report of the insurance company for, and the law applicable to, the preceding taxable year; or
- An amount equal to ninety percent of the tax measured by direct gross premium income received or derived in the taxable year computed by placing on an annualized basis the taxable direct gross premium income:
 - For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,
 - For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,
 - For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and
 - For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

When computing whether the third exception applies, the taxable direct gross premium income is placed on an annualized basis by multiplying the taxable direct gross premium income computed by twelve and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be). An insurance company can notify the Department that one of the exceptions applies by completing Form 800C.

Declarations for Insurance Companies with Taxable Years of Less than Twelve Months

Any insurance company with a taxable year of less than 12 months but whose annual Insurance Premiums License Tax liability is expected to exceed \$3,000 must file

Updated Virginia Insurance Premiums License Tax Guidelines

declarations of estimated payments of Insurance Premiums License Tax. Such taxpayers must follow the same procedures as those described above.

The date the declaration is to be filed and the number and amount of installments to be paid is determined as follows:

- If an insurance company meets the requirements before April 1, it must file its first declaration by April 15 of the taxable year, and must make four estimated payments equal to one-fourth of the estimated tax;
- If an insurance company meets the requirements after March 30 but before June 1, it must file its first declaration by June 15 of the taxable year, and must make three estimated payments equal to one-third of the estimated tax;
- If an insurance company meets the requirements after May 31 but before September 1, it must file its first declaration by September 15 of the taxable year, and must make two estimated payments equal to one-half of the estimated tax.
- If an insurance company meets the requirements after August 30 but before December 1, it must file one declaration by December 15 of the taxable year, and must make one estimated payment equal to one hundred percent of the estimated tax.

Amending Declarations of Estimated Tax

Va. Code § 58.1-2522 allows insurance companies to submit amended declarations of estimated taxes. An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval. In order to amend a declaration of estimated taxes, a taxpayer should complete the "Amended Computation" section of Form 800ES, and follow the form instructions.

Penalty and Interest Rules for the Underpayment of Taxes

If an insurance company fails to pay the required tax for a given taxable year by the time its annual tax report is due, a penalty of 10 percent of the amount due. An additional penalty of \$50 per day is added for each day an insurance company fails to file an annual tax report. In addition to these penalties, interest will continue to accrue at the rate set forth in *Va. Code* § 58.1-15 until the date of full payment.

Exchange of Information Between the Department and the SCC

Va. Code § 58.1-3 generally allows the Department to share information with another agency of the Commonwealth in the line of duty under state law. Additionally, *Va. Code* § 58.1-2528 specifically authorizes the Department and the SCC to exchange

Updated Virginia Insurance Premiums License Tax Guidelines

information for the purposes of enforcing the provisions of the Insurance Premiums License Tax. The SCC will provide the Department with information regarding which insurers are licensed in Virginia and may have an Insurance Premiums License Tax liability. Pursuant to Va. Code § 58.1-2507, the Department will notify the SCC if an insurance company fails to make the necessary payment with its annual tax report. The SCC may use such information to suspend or revoke the insurance company's license to do business in Virginia if the additional amounts due are not paid.

Additional Information

These guidelines are available online in the Tax Policy Library section of the Department's website, located at www.policylibrary.tax.virginia.gov. For additional information, please contact the Department at (804) 367-8037. For any questions regarding licensing or annual maintenance assessments, please contact the State Corporation Commission's Bureau of Insurance at (804) 371-9741.

Approved:



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Tax Commissioner