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Rule ID(s): 6104
File Date (effective date): 1/12/16
End Effective Date: 7/10/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Kathleen Dixon, Assistant General Counsel
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A. § 4-5-208, the Commissioner of Commerce and Insurance ("Commissioner") is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 155 of the Public Acts of 2015 ("Act") amended the existing insurance company premium taxation statutes by adding new provisions which require electronic collection of premium taxes. All non-exempt insurance companies selling insurance in the State of Tennessee are required to pay quarterly premium taxes on gross premiums paid by policyholders residing in this state or on property located in this state. The Act requires these premium tax payments be made electronically, in a form approved by the Commissioner. The Act further directs the Commissioner to establish rules for the payment and receipt of premium taxation in electronic format. The Act lastly allows the Commissioner to establish a convenience fee payable by the insurance company to cover the costs of accepting electronic premium tax returns. The electronic premium taxation payment requirement and rulemaking authority both take effect January 1, 2016, and the public chapter was signed into law by the Governor on April 1, 2015. There is not enough time to go through a notice of rulemaking hearing as the January 1, 2016, premium taxation requirements takes effect concurrent with the authority to enact rules to regulate such payments.

These rules are necessary for the Commissioner to establish the format and process for electronic premium taxation payments to be made. These rules are intended to establish consistent methods for payment and receipt of premium taxes from all insurance companies operating in the State of Tennessee.

The simultaneous January 1, 2016, effective date of both the electronic payment requirement and the authority to create rules regulating such electronic payments does not provide adequate time to conduct a notice of rulemaking hearing. Due to the length of time necessary to complete the rulemaking process to promulgate

rules for the electronic payment of premium taxes, these emergency rules are required in order for the Commissioner to comply with the enactment of the Legislature and to ensure that the Commissioner has the necessary resources to implement the Act. The Commissioner will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules; the notice of rulemaking hearing is being filed contemporaneously with these emergency rules.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0780-01-50	Relating to the Timely Filing of Premium Tax Returns
Rule Number	Rule Title
0780-01-50-.01	Definitions
0780-01-50-.02	Purpose
0780-01-50-.03	Scope
0780-01-50-.04	Identification of Taxes, Fees and Other Obligations Covered
0780-01-50-.05	Filing Returns and Payment of Taxes
0780-01-50-.06	Severability Provision

Chapter 0780-01-50
Relating to the Timely Filing of Premium Tax Returns

Amendments

Chapter 0780-01-50, Relating to the Timely Filing of Premium Tax Returns, is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-01-50
Relating to Timely Filing of Premium Tax Returns

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0780-01-50-.01 Definitions
 0780-01-50-.02 Purpose
 0780-01-50-.03 Scope
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 0780-01-50-.06 Severability Provision

0780-01-50-.01 Definitions.

- (1) "Commissioner," as used herein, means the commissioner of commerce and insurance.
- (2) "Department" means the department of commerce and insurance.
- (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) "Gross premiums," as used in this chapter, means maximum gross premiums as provided in the policy contracts, new and renewal, including policy or membership fees, whether paid in part or in whole by cash, automatic premium loans, dividends applied in any manner whatsoever, and without deduction or exclusion of dividends in any manner; but excluding premiums returned on cancelled policies, or on account of reduction in rates, or reductions in the amount insured or experience rating refunds on life insurance policies and disability insurance policies.
- (5) "Immediately available funds," as used in this chapter, shall mean funds which are available to OPTins pursuant to rule 0780-01-50-.05.

- (6) "NAIC" means the National Association of Insurance Commissioners.
- (7) "OPTins" means the NAIC's Online Premium Tax for Insurance tax filing and payment program.
- (8) "Signature of attestation" means the taxpayer's certification that the tax return, and any accompanying forms or payments, have been examined and are, to the best of the taxpayer's knowledge, information, and belief, a true, correct, and complete tax return made in good faith, as evidenced by the taxpayer's mark either through an electronic verification on the OPTins tax form, or through submission of an electronic copy of a hand-signed form.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.02 Purpose.

The purpose of this chapter is to establish the method required by the department for the filing of premium tax returns and the payment of premium taxes and other fees by electronic means.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.03 Scope.

Every entity required to file returns, reports or other documents and make payments pursuant to the taxes listed in rule 0780-01-50-.04 shall file such returns, reports or other documents and make such payments of premium taxes, fees or other obligations identified herein in the electronic format as specified by this chapter, no later than the date such payment or remittance of funds is required, in funds which are immediately available to OPTins pursuant to rule 0780-01-50-.05 on the due date of payment no later than the close of business.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.04 Identification of Taxes, Fees and Other Obligations Covered.

Payments for the following taxes, fees or other obligations will be subject to payment pursuant to this chapter:

- (1) Gross premium tax as found in T.C.A. § 56-4-205;
- (2) Workers' Compensation gross premium tax as found in T.C.A. § 56-4-206;
- (3) Additional payment for fire insurance as found in T.C.A. § 56-4-208;
- (4) Retaliatory tax as found in T.C.A. § 56-4-218;
- (5) Taxation on Health Maintenance Organizations as found in T.C.A. § 56-32-124;
- (6) Tax on title insurance risk rate charges as found in T.C.A. § 56-35-107
- (7) Any other tax or fee, including the fee under rule 0780-01-50-.05(6) as may be associated with the payment of the above listed taxes.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-206, 56-4-208, 56-4-216, 56-4-218, 56-32-124, 56-35-107, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.05 Filing Returns and Payment of Taxes.

- (1) Every entity required to file a return, report or other document with the department, in conjunction with the taxes listed in rule 0780-01-50-.04, shall file any such return, report or other document with the department electronically, no later than the date such return, report or other document is required by law to be filed with the department. Such return, report or document filed electronically with the department shall be filed through OPTins and signed by the taxpayer by means of an acceptable signature or attestation.
 - (a) Filings made to OPTins on or before the day the tax payment is due shall be deemed received by the department on the date received by OPTins.
- (2) Every entity required to file a return shall also pay any taxes owed through OPTins by any means accepted by OPTins.
 - (a) Payments remitted through Automated Clearing House Debit (ACH-debit) payable to OPTins on or before the day the tax payment is due shall be deemed received by the department and paid to the department on the date the ACH-debit is initiated.
 - (b) Payments made through Automated Clearing House Credit (ACH-credit) payable to OPTins shall be deemed received by the department and paid to the department, so long as the ACH-credit is received by OPTins on or before the day the tax payment is due.
 - (c) The commissioner may waive rule 0780-01-50-.05(2)(a) and (b) in the event OPTins has been subject to some kind of catastrophic event.
- (3) Failure to timely make such payment in immediately available funds shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments pursuant to T.C.A. § 56-4-216. If payment is timely made in other than immediately available funds, such that payment is not received by the state on the date payments are due, penalty and interest shall be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.
- (4) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the electronic payment must be made so that the funds are immediately available on the first business day after the due date.
- (5) The requirement to make electronic payments does not change the requirement to file returns, reports and documents associated with said payments in the manner prescribed by rule 0780-01-50-.05(1).
- (6) Every entity required to file a return shall be responsible for paying a convenience fee of up to Ten Dollars (\$10.00) per filing to cover the department's actual costs incurred by accepting electronic filings through OPTins. Such convenience fee shall be assessed in addition to any applicable penalty and interest. Such convenience fee shall be in addition to the premium tax.
- (7) In the event an entity believes the correct calculation of its taxes contemplated in rule 0780-01-50-.04 is different from the taxes calculated by OPTins, that entity retains the right to dispute the tax calculation after payment of the tax as assessed.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.06 Severability Provision.

If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 1/5/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance



Subscribed and sworn to before me on: 1/5/16

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/16

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatyer III

Herbert H. Slatyer III
Attorney General and Reporter

1/8/2016

Date

Department of State Use Only

Filed with the Department of State on: 1/12/16

Effective for: 180 *days

Effective through: 7/10/16

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules establish a means and method for the filing of insurance company premium taxes by electronic means. Specifically, these rules instruct that the Division of Insurance will use the OPTins program for payment and collection of premium taxes. These rules also establish a ten dollar (\$10) convenience fee for electronic payment of such premium taxes.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This emergency rule is promulgated pursuant to 2015 Public Acts, Chapter 155, and Tenn. Code Ann. § 56-4-216.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will affect insurance companies selling insurance in the State of Tennessee. The insurance industry has been given the opportunity to review these emergency rules and is expected to support the adoption of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael Humphreys, Assistant Commissioner for Insurance; Lauren Dantche, Director of Insurance; Mark Jaquish, Director of Financial Affairs Section; Kathleen Dixon, Assistant General Counsel for Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kathleen Dixon, Assistant General Counsel for Insurance.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-532-6830; kathleen.dixon@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Rules
Of
The Tennessee Department Of Insurance
Division Of Insurance

Chapter 0780-01-50
Relating To ~~The~~ Timely Filing ~~Of~~ Premium Tax Returns

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0780-01-50-01 ~~DEFINTIONS~~ Definitions.

- (1) "Tax return", as used herein, shall mean the tax return as identified in Section 56-4-205, Tennessee Code Annotated. "Commissioner," as used herein, means the commissioner of commerce and insurance.
- (2) "Payment", as used herein, means check payable to the Commissioner in the full amount due as calculated on the tax return. "Department" means the department of commerce and insurance.
- (3) "Commissioner", as used herein, means the Commissioner of Insurance. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) "Gross premiums," as used in this chapter, means maximum gross premiums as provided in the policy contracts, new and renewal, including policy or membership fees, whether paid in part or in whole by cash, automatic premium loans, dividends applied in any manner whatsoever, and without deduction or exclusion of dividends in any manner; but excluding premiums returned on cancelled policies, or on account of reduction in rates, or reductions in the amount insured or experience rating refunds on life insurance policies and disability insurance policies.
- (5) "Immediately available funds" as used in this chapter shall mean funds which are available to OPTins pursuant to rule 0780-01-50-.05.
- (6) "NAIC" means the National Association of Insurance Commissioners.
- (7) "OPTins" means the NAIC's Online Premium Tax for Insurance tax filing and payment program.
- (8) "Signature of attestation" means the taxpayer's certification that the tax return, and any accompanying forms or payments, have been examined and are, to the best of the taxpayer's knowledge, information, and belief, a true, correct, and complete tax return made in good faith, as evidenced by the taxpayer's mark either through an electronic verification on the OPTins tax form, or through submission of an electronic copy of a hand-signed form.

Authority: T.C.A. §§ 56-1-501, 56-1- 701, and 56-2-301-, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.02 PURPOSE Purpose.

The purpose of this rule is to identify the two methods of making premium tax filings and payments promptly and correctly as required by Section 56-4-216, Tennessee Code Annotated. chapter is to establish the method required by the department for the filing of premium tax returns and the payment of premium taxes and other fees by electronic means.

Authority: T.C.A. §§ 56-1-501, 56-1- 701, and 56-2-301-, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.03 DUE DATE OF PAYMENTS-Scope.

For compliance with the requirements of Section 56-4-205, 206, 207, 208 and 209, Tennessee Code Annotated, all such taxes shall not be considered as paid on or before March 1 and /or September 1 of each year unless the tax returns and payment are actually received in the department on or before March 1 and/or September 1 of each year; except, that a tax return with payment will be considered "timely filed" provided such premium tax return and payment bears a registered mailing date no later than March 1 and/or September 1 and is transmitted by registered United States Mail, return receipt requested. When the due date falls on a non-business day (Sunday or legal holiday), the next business day following will be considered as the due date. Every entity required to file returns, reports or other documents and make payments pursuant to the taxes listed in rule 0780-01-50-.04 shall file such returns, reports or other documents and make such payments of premium taxes, fees or other obligations identified herein in the electronic format as specified by this chapter, no later than the date such payment or remittance of funds is required, in funds which are immediately available to OPTins pursuant to rule 0780-01-50-.05 on the due date of payment no later than the close of business.

Authority: T.C.A. §§ 56-1-501, 56-1- 701, and 56-2-301-, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.04 Identification of Taxes, Fees and Other Obligations Covered.

Payments for the following taxes, fees or other obligations will be subject to payment pursuant to this chapter:

- (1) Gross premium tax as found in T.C.A. § 56-4-205;
- (2) Workers' Compensation gross premium tax as found in T.C.A. § 56-4-206;
- (3) Additional payment for fire insurance as found in T.C.A. § 56-4-208;
- (4) Retaliatory tax as found in T.C.A. § 56-4-218;
- (5) Taxation on Health Maintenance Organizations as found in T.C.A. § 56-32-124;
- (6) Tax on title insurance risk rate charges as found in T.C.A. § 56-35-107
- (7) Any other tax or fee, including the fee under rule 0780-01-50-.05(6) as may be associated with the payment of the above listed taxes.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-206, 56-4-208, 56-4-216, 56-4-218, 56-32-124, 56-35-107, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.05 Filing Returns and Payment of Taxes.

- (1) Every entity required to file a return, report or other document with the department, in conjunction with the taxes listed in rule 0780-01-50-.04, shall file any such return, report or other document with the department electronically, no later than the date such return, report or other document is required by law to be filed with the department. Such return, report or document filed electronically with the department shall be filed through OPTins and signed by the taxpayer by means of an acceptable signature of attestation.
 - (a) Filings made to OPTins on or before the day the tax payment is due shall be deemed received by the department on the date received by OPTins.
- (2) Every entity required to file a return shall also pay any taxes owed through OPTins by any means accepted by OPTins.
 - (a) Payments remitted through Automated Clearing House Debit (ACH-debit) payable to OPTins on or before the day the tax payment is due shall be deemed received by the department and paid to the department on the date the ACH-debit is initiated.
 - (b) Payments made through Automated Clearing House Credit (ACH-credit) payable to OPTins shall be deemed received by the department and paid to the department, so long as the ACH-credit is received by OPTins on or before the day the tax payment is due.
 - (c) The commissioner may waive rule 0780-01-50-.05(2)(a) and (b) in the event OPTins has been subject to some kind of catastrophic event.
- (3) Failure to timely make such payment in immediately available funds shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments pursuant to T.C.A. § 56-4-216. If payment is timely made in other than immediately available funds, such that payment is not received by the state on the date payments are due, penalty and interest shall be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.
- (4) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the electronic payment must be made so that the funds are immediately available on the first business day after the due date.
- (5) The requirement to make electronic payments does not change the requirement to file returns, reports and documents associated with said payments in the manner prescribed by rule 0780-01-50-.05(1).
- (6) Every entity required to file a return shall be responsible for paying a convenience fee of up to Ten Dollars (\$10.00) per filing to cover the department's actual costs incurred by accepting electronic filings through OPTins. Such convenience fee shall be assessed in addition to any applicable penalty and interest. Such convenience fee shall be in addition to the premium tax.
- (7) In the event an entity believes the correct calculation of its taxes contemplated in rule 0780-01-50-.04 is different from the taxes calculated by OPTins, that entity retains the right to dispute the tax calculation after payment of the tax as assessed.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.06 Severability Provision.

If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.