

Notice of Rulemaking Hearing
Department of Commerce and Insurance
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Conference Room A on the Fifth Floor of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 10:00 a.m. CST on the 15th day of August, 2008.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, and (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Tony Greer, Department of Commerce and Insurance, Office of Legal Counsel, 500 James Robertson Parkway, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-01-37
Annual Statement Filing Requirements

Amendments

Chapter 0780-01-37 is amended by deleting the Chapter in its entirety and substituting the following language so that as amended the Chapter shall read:

Chapter 0780-01-37
Annual Statement Filing Requirements

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0780-01-37-.01 Purpose.

The purpose of this Chapter is to set forth the manner in which insurers and health maintenance organizations licensed in the State of Tennessee file annual and quarterly financial statements with the Commissioner.

Authority: T.C.A. §§ 56-1-501, 56-2-301 and 56-32-218.

0780-01-37-.02 Scope.

Every insurer authorized to do business under the provisions of Title 56, Chapters 2, 14-22, 23, 24, 26-32, 35, 43 and 45 that is required to file annual statements pursuant to T.C.A. § 56-1-501 must file such annual and quarterly statements in the manner provided by this Chapter. Every health maintenance organization, authorized to do business under the provisions of Title 56, Chapter 32, that is required to file an annual report pursuant to T.C.A. § 56-32-208, must file such report in the manner provided by this Chapter.

Authority: T.C.A. §§,56-1-501, 56-2-301, and 56-32-218.

0780-01-37-.03 Authority.

This Chapter is promulgated by the commissioner pursuant to T.C.A. §§ 56-2-301 and 56-32-218.

Authority: T.C.A. §§ 56-1-501, 56-2-301, and 56-32-218.

0780-01-37-.04 Definitions.

As used in this Chapter, unless noted otherwise, the following definitions shall apply:

- (1) "Annual statement" means and includes annual statements, the Statement of Actuarial Opinion,, Management's Discussion and Analysis and any other documents specified in T.C.A. § 56-1-501.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (3) "Department" means the Tennessee Department of Commerce and Insurance.
- (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (5) "Health maintenance organization" means any person that undertakes to provide or arrange for basic health care services to enrollees on a prepaid basis pursuant to Title 56, Chapter 32 of the Tennessee Code Annotated.
- (6) "Insurer" means a licensed insurer as defined in Title 56 Chapter 2 of the Tennessee Code Annotated or an authorized insurer as defined in Title 56, Chapter 14 of the Tennessee Code Annotated.
- (7) "NAIC" means the National Association of Insurance Commissioners.

Authority: T.C.A. §§ 56-1-501, 56-2-301, 56-32-218, and 56-44-102(a)(1).

0780-01-37-.05 Form of Annual Statements.

- (1) Pursuant to the annual financial reporting requirements of T.C.A. § 56-1-501, all insurers enumerated in T.C.A. § 56-1-501(b) must use the following annual statement forms adopted by the National Association of Insurance Commissioners, as amended from time to time, as is appropriate for each line or types of insurance business in which the company is engaged, unless such forms are in contradiction with a law or statute:
 - (a) Life and Accident and Health Annual Statement Blank;
 - (b) Property and Casualty Annual Statement Blank;
 - (c) Title Annual Statement Blank;
 - (d) Fraternal Annual Statement Blank; and
 - (e) Health Annual Statement Blank.
- (2) Insurers are required to use any annual statement forms adopted by the NAIC for any other lines or types of insurance business that may be applicable to insurers licensed and operating in this State.
- (3) Health maintenance organizations required to file annual reports pursuant to T.C.A. § 56-32-208 must use the blank prescribed by the NAIC for health maintenance organizations.

Authority: T.C.A. §§ 56-1-501, 56-2-301, and 56-32-218.

0780-01-37-.06 Instructions for Completion of Annual Statement Forms.

- (1) For completion of the annual statement forms required under Rule 0780-01-37-.05, and except when such instructions conflict with a statute, the applicable instructions adopted by the NAIC, as amended from time to time, and as follows, as well as all other applicable rules promulgated by the commissioner, must be followed in completing and filing the annual statement forms:
 - (a) Instructions for Completing Life and Accident and Health Annual Statement Blank;
 - (b) Instructions for Completing Property and Casualty Annual Statement Blank;
 - (c) Instructions for Completing Title Annual Statement Blank;
 - (d) Instructions for Completing Fraternal Annual Statement Blank; and
 - (e) Instructions for Completing Health Annual Statement Blank.
- (2) Insurers are required to use any instructions adopted by the NAIC which are applicable to any annual statement form referenced in Rule 0780-01-37-.05.
- (3) Health maintenance organizations are required to use any instructions adopted by the NAIC which are applicable to any annual report form referenced in Rule 0780-01-37-.05.

Authority: T.C.A. §§ 56-1-501, 56-2-301 and 56-32-218.

0780-01-37-.07 Quarterly Financial Statements.

- (1) In addition to annual statements required by T.C.A. § 56-1-501, all insurers required to file such annual statements are also required to file financial statements on a quarterly basis. Such quarterly statements must be filed on May 15, August 15, and November 15 of each year. Foreign insurers shall, unless requested by the Commissioner, file their quarterly statements with the NAIC in lieu of filing such statements with the Commissioner.
- (2) Pursuant to the annual financial reporting requirements of T.C.A. § 56-1-501, all insurers enumerated in T.C.A. § 56-1-501(b) must use the following Quarterly Financial Statement forms adopted by the NAIC, as amended from time to time:
 - (a) Life and Accident and Health Quarterly Statement Blank;
 - (b) Property and Casualty Quarterly Statement Blank;
 - (c) Title Quarterly Statement Blank;
 - (d) Fraternal Quarterly Statement Blank; and
 - (e) Health Quarterly Statement Blank.
- (3) Insurers are required to use any quarterly statement form adopted by the NAIC for any other lines or types of insurance business that may be applicable to companies licensed and operating in this State.
- (4) Health maintenance organizations required to file annual reports pursuant to T.C.A. § 56-32-208 shall also file a quarterly financial statement on the quarterly statement form adopted by the NAIC for health maintenance organizations.

Authority: T.C.A. §§ 56-1-501, 56-2-301, 56-32-218, and 56-44-102(a)(1).

0780-01-37-.08 Filing of Financial Statements.

- (1) For insurers not domiciled in Tennessee, the financial statements required by this Chapter shall be filed electronically with the NAIC. Such entities shall file with the commissioner a hard copy jurat page only, in the manner provided by the commissioner, subscribed and sworn to by the insurer's president and secretary, or in their absence, by two (2) of its principal officers.
- (2) For all insurers domiciled in Tennessee, the financial statements required by this Chapter shall be filed electronically with the commissioner. The insurer shall also file with the commissioner one (1) non-electronic signed original and one (1) non-electronic copy of the annual statement. Domestic insurers doing business in more than one (1) state and any other domestic insurers as required by the commissioner shall also file the annual statement electronically with the NAIC. The original and hard copy annual statements should be subscribed and sworn to by the insurer's president and secretary, or in their absence, by two (2) of its principal officers as required by applicable Tennessee law.
- (3) For purposes of this Rule, health maintenance organizations shall file in the same manner as domestic insurers pursuant to Paragraph (2) of this Rule.

Authority: T.C.A. §§ 56-1-501, 56-2-301, 56-32-218, and 56-44-102.

0780-01-37-.09 Due Dates for the Filing of Financial Statements.

- (1) Original and hard copy, annual statement filings, if required by this Chapter, shall be mailed on or before March 1 of each year.
- (2)
 - (a) For insurers not domiciled in Tennessee, each quarterly statement may be filed electronically with the NAIC, unless the commissioner requests otherwise.
 - (b) For insurers domiciled in Tennessee, each quarterly statement shall be filed electronically with the commissioner, and one (1) signed original and one (1) hard copy of each quarterly statement shall also be filed with the commissioner. Domestic insurers doing business in more than one (1) state and any other domestic insurers as required by the Commissioner shall also file the quarterly statement electronically with the NAIC.
 - (c) Original and hard copy quarterly filings, if required by this Chapter, shall be mailed on or before May 15, August 15 and November 15 of each year.

Authority: T.C.A. §§ 56-1-501, 56-2-301, 56-32-218, and 56-44-102.

0780-01-37-.10 Effect of Filing in Violation of this Chapter.

Financial statements or information not prepared in a manner consistent with all applicable laws and the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the applicable reporting period shall be deemed not to meet the filing requirements of T.C.A. §§ 56-1-501 and 56-32-208 or Rule 0780-01-37-.06.

Authority: T.C.A. §56-1-501, 56-2-301, 56-32-218, and 56-44-102(a)(1).

0780-01-37-.11 Violation and Penalties.

- (1) Any insurer that fails to make and file its annual statement in the form and time provided by this Chapter shall be subject to the penalties provided for by T.C.A. § 56-1-502, as well as such other sanctions provided for by law.
- (2) Any health maintenance organization that fails to file its annual report in the form and time provided by T.C.A. § 56-32-208 and this Chapter shall be subject to the penalties provided for by T.C.A. § 56-1-801, as well as such other sanctions provided for by law.

Authority: T.C.A. §56-1-501, 56-2-301, 56-2-305, 56-1-502, 56-32-218, and 56-44-102(a)(1).

0780-01-37-.12 Severability.

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

Authority: T.C.A. §§ 56-1-501, 56-32-218, and 56-2-301.

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

Amendments

Chapter 0780-01-50 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
Premium Tax Filing and Payment Instructions

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0780-01-50-.01 Purpose.

The purpose of this Chapter is to establish a method for the filing of premium tax returns and the payment of premium taxes by insurance companies doing business in this State.

Authority: T.C.A. §§ 56-2-301, and 56-4-216.

0780-01-50-.02 Scope.

Every insurance company, self-insurer and health maintenance organization doing business in this State subject to the taxes by the Tennessee Code Annotated shall pay such taxes in the manner provided by this Chapter. The entities subject to this Chapter shall include, but not be limited to, the following:

- (1) Gross premiums tax on insurance companies 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) Self insured employers tax as found in T.C.A. § 56-4-207;
- (4) Retaliatory tax as found in T.C.A. § 56-4-218;
- (5) Captive Insurance Companies premium tax as found in T.C.A. § 56-13-128;
- (6) Surplus lines brokers premium tax as found in T.C.A. § 56-14-113;
- (7) Health maintenance organization tax as found in T.C.A. § 56-32-224;
- (8) Title Insurance Company risk rate charges tax as found in T.C.A. § 56-35-107;

- (9) Risk Retention Groups premiums tax as found in T.C.A. § 56-45-110; and
- (10) Any other tax or fee as may be associated with the payment of the above listed taxes.

Authority: T.C.A. §§ 56-2-301, 56-4-216, 56-13-129, 56-32-218, 56-35-122, 56-45-114 and Title 56 Chapter 14.

0780-01-50-.03 Authority.

This Chapter is promulgated by the commissioner pursuant to T.C.A. §§ 56-1-501, 56-2-301, 56-4-216, 56-13-129, 56-32-218, 56-35-122, 56-45-114 and Title 56 Chapter 14.

Authority: T.C.A. §§ 56-2-301, 56-4-216, 56-13-129, 56-32-218, 56-35-122, 56-45-114 and Title 56 Chapter 14.

0780-01-50-.04 Definitions.

As used in this Chapter, unless noted otherwise, the following definitions shall apply:

- (1) "Commissioner" 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) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (5) "Gross premiums" 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.
- (6) "Immediately available funds" means funds which are available to the State on the date of payment.
- (7) "Insurance company" means any insurance, fidelity or surety company, including any corporation, company, partnership, association, society, order, fraternal or otherwise, individual or aggregation of individuals engaging in, or proposing or attempting to engage in, any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations.
- (8) "NAIC" means the National Association of Insurance Commissioners.

Authority: T.C.A. §§ 56-2-301 and 56-4-216.

0780-01-50-.05 Filing Returns and Proof of Filing.

- (1) Every entity required to file a return, report or other document with the commissioner, in conjunction with the taxes listed in Tenn. Comp. R. & Reg. § 0780-01-50-.02, may file any

such return, report or other document with the commissioner by hand delivery, through United States mail service, Federal Express or other similar delivery service, or electronically, no later than the date such return, report or other document is required by law to be filed with the commissioner. Such return, report or document must be in the format specified by the commissioner.

- (2) For all filings that are not filed electronically, such return, report or other documents shall bear the original signature of a person authorized to sign such documents. For all filings made electronically, such return, report or other document must bear an electronic signature in the form provided for by the commissioner.

Authority: T.C.A. §§ 56-2-301, 56-4-216, 56-13-129, 56-32-218, 56-35-122, 56-45-114 and Title 56 Chapter 14.

0780-01-50-.06 Procedures for Making Payment, Payment Alternatives and Proof of Timely Payment.

- (1) Payments of premium taxes shall be paid either by check or through electronic means authorized by the commissioner.
- (2) Evidence of the electronic deposit must be furnished to the commissioner on or before the due date of the tax as established by law, and no taxpayer paying taxes in such manner shall be relieved of any penalty for delinquency upon failure of such evidence to be seasonably furnished.
- (3) All payments, electronic or otherwise, must be made with immediately available funds so that such funds are available to the state on the date of payment. Failure to timely make such payment in immediately available funds, or failure to provide such evidence of electronic deposit in a timely manner, 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 a payment is timely made in other than immediately available funds, 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) Payment in immediately available funds may be made by the following methods:
 - (a) Automated Clearing House Debit (ACH-debit),
 - (b) Automated Clearing House Credit (ACH-credit),
 - (c) Wire Transfer through the Federal Reserve System (FedWire),
 - (d) Transfer into a State of Tennessee account in a Tennessee depository from the person's account at the same depository,
 - (e) Currency deposited in a State of Tennessee account at a Tennessee depository or delivered to the central office of the Department of Revenue in Nashville, Tennessee, or
 - (f) Any other means established by the commissioner.
- (5) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the payment must be made so that the funds are immediately available on the first business day thereafter.
- (6) The requirement to make payments in immediately available funds does not change the requirement to file returns, reports and documents associated with said payments

in the manner prescribed by statute and by rules and regulations promulgated by the commissioner.

- (7) The commissioner may provide for a convenience fee to cover the cost of accepting electronic returns, reports or other documents and electronic premium tax payments, including any clearing house fees. Any fee set by rule under the authority of T.C.A. § 56-4-216 (c)(4) may be assessed in addition to any applicable penalty and interest. In no event shall the convenience fee exceed the actual costs incurred by the commissioner or any third party under contract acting on behalf of the commissioner when accepting electronic returns, reports or other documents and electronic premium payments. Such convenience fee shall be in addition to the premium tax.

Authority: T.C.A. §§ 56-2-301, 56-4-216, 56-13-129, 56-32-218, 56-35-122, 56-45-114 and Title 56 Chapter 14.

0780-01-50-.07 Due Dates for Filing Tax Returns and Making Payments.

- (1) For compliance with the requirements of T.C.A. §§ 56-4-205, 56-4-206, 45-4-207, 56-4-208, 56-4-209, 56-4-218, 56-13-128, 56-14-113, 56-32-224, 56-35-107 and 56-45-110 all such taxes shall not be considered as paid on or before March 1, June 1, August 20, September 1 and December 1 of each year unless the tax returns and payments are actually received by the commissioner on or before such dates of each year; except, that a tax return with payment will be considered timely filed provided such premium tax return and payment bears a certified mailing date no later than such dates and is transmitted by certified 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.
- (2) Notwithstanding Paragraph (1) of this Rule, a tax return with payment will be considered timely filed provided such premium tax return and payment bears a certified mailing date no later than such dates and is transmitted by certified 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.
- (3) A tax payment electronically paid shall be deemed actually received if the amount due for the tax has been deposited electronically in a state depository designated pursuant to T.C.A. § 9-4-107, which has been approved by the state treasurer, to the credit of the state of Tennessee.

Authority: T.C.A. §§ 56-2-301, 56-4-216, 56-13-129, 56-32-218, 56-35-122, 56-45-114 and Title 56 Chapter 14.

0780-01-50-.08 Delinquency and Penalties.

- (1) For insurers and health maintenance organizations that are required to file quarterly returns and make quarterly payments, pursuant to T.C.A. §§ 56-4-205, 56-4-206, 56-4-207, 56-4-208, 56-4-209, 56-4-218 and 56-32-224, the installments of the annual premium taxes due and payable for each quarter as described herein shall be based on the estimated amount of gross premiums received by an insurer or dollars collected by a health maintenance organization from enrollees or on enrollees' behalf during that prior calendar quarter. A final payment of tax due for the preceding calendar year shall be made at the time each such entity files its March 1 return. Any entity which fails to report and pay any installment of tax, promptly and correctly as provided by this section, or which estimates any installment of tax to be less than eighty percent (80%) of the amount finally shown to be due in any quarter, shall be subject to interest and penalty as provided in T.C.A. § 56-4-216 for any underpayment

of taxes due and payable for that quarter. Any entity paying, for each installment required in this section, twenty-five percent (25%) of the amount of the annual premium taxes reported on its annual return for the preceding year shall not be subject to any penalty or interest for such underpayment.

- (2) Any taxes and/or returns that are not filed promptly and correctly as provided for by this Chapter shall be subject to the penalties set forth in T.C.A. § 56-4-216.

Authority: T.C.A. §§ 56-2-301, 56-4-216 and 56-32-218.

0780-01-50-.09 Severability Provision.

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

Authority: T.C.A. §§ 56-2-301 and 56-4-216.

0780-01-50-.10. Effective Date.

This Chapter shall become effective January 1, 2009, and shall be applicable to payments due on or after said date.

Authority: T.C.A. § 56-4-216.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2008. (FS 06-31-08; DBID 868-869)