



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4473

Introduced 02/03/04, by Frank J. Mautino

SYNOPSIS AS INTRODUCED:

215 ILCS 5/412

from Ch. 73, par. 1024

Amends the Illinois Insurance Code. Provides that, except to the extent that the Director determines that the amount retained in the Illinois Premium Tax Refund Fund exceeds the anticipated amount of certain refunds to be made, the Department shall deposit a percentage of specified amounts collected into the Insurance Premium Tax Refund Fund. Effective immediately.

LRB093 16597 SAS 42246 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 412 as follows:

6 (215 ILCS 5/412) (from Ch. 73, par. 1024)

7 Sec. 412. Refunds; penalties; collection.

8 (1) (a) Whenever it appears to the satisfaction of the
9 Director that because of some mistake of fact, error in
10 calculation, or erroneous interpretation of a statute of
11 this or any other state, any authorized company has paid to
12 him, pursuant to any provision of law, taxes, fees, or
13 other charges in excess of the amount legally chargeable
14 against it, during the 6 year period immediately preceding
15 the discovery of such overpayment, he shall have power to
16 refund to such company the amount of the excess or excesses
17 by applying the amount or amounts thereof toward the
18 payment of taxes, fees, or other charges already due, or
19 which may thereafter become due from that company until
20 such excess or excesses have been fully refunded, or upon a
21 written request from the authorized company, the Director
22 shall provide a cash refund within 120 days after receipt
23 of the written request if all necessary information has
24 been filed with the Department in order for it to perform
25 an audit of the annual return for the year in which the
26 overpayment occurred or within 120 days after the date the
27 Department receives all the necessary information to
28 perform such audit. The Director shall not provide a cash
29 refund if there are insufficient funds in the Insurance
30 Premium Tax Refund Fund to provide a cash refund, if the
31 amount of the overpayment is less than \$100, or if the
32 amount of the overpayment can be fully offset against the

1 taxpayer's estimated liability for the year following the
2 year of the cash refund request. Any cash refund shall be
3 paid from the Insurance Premium Tax Refund Fund, a special
4 fund hereby created in the State treasury.

5 (b) Except to the extent that the Director, in his
6 discretion, determines that the amount retained in the
7 Illinois Premium Tax Refund Fund exceeds the anticipated
8 amount of refunds to be made pursuant to this Section
9 ~~Beginning January 1, 2000 and thereafter,~~ the Department
10 shall deposit a percentage of the amounts collected under
11 Sections 409, 444, and 444.1 of this Code into the
12 Insurance Premium Tax Refund Fund. The percentage
13 deposited into the Insurance Premium Tax Refund Fund shall
14 be the annual percentage. The annual percentage shall be
15 calculated as a fraction, the numerator of which shall be
16 the amount of cash refunds approved by the Director for
17 payment and paid during the preceding calendar year as a
18 result of overpayment of tax liability under Sections 409,
19 444, and 444.1 of this Code and the denominator of which
20 shall be the amounts collected pursuant to Sections 409,
21 444, and 444.1 of this Code during the preceding calendar
22 year. However, if there were no cash refunds paid in a
23 preceding calendar year, the Department shall deposit 5% of
24 the amount collected in that preceding calendar year
25 pursuant to Sections 409, 444, and 444.1 of this Code into
26 the Insurance Premium Tax Refund Fund instead of an amount
27 calculated by using the annual percentage.

28 (c) Beginning July 1, 1999, moneys in the Insurance
29 Premium Tax Refund Fund shall be expended exclusively for
30 the purpose of paying cash refunds resulting from
31 overpayment of tax liability under Sections 409, 444, and
32 444.1 of this Code as determined by the Director pursuant
33 to subsection 1(a) of this Section. Cash refunds made in
34 accordance with this Section may be made from the Insurance
35 Premium Tax Refund Fund only to the extent that amounts
36 have been deposited and retained in the Insurance Premium

1 Tax Refund Fund.

2 (d) This Section shall constitute an irrevocable and
3 continuing appropriation from the Insurance Premium Tax
4 Refund Fund for the purpose of paying cash refunds pursuant
5 to the provisions of this Section.

6 (2) When any insurance company or any surplus line producer
7 fails to file any tax return required under Sections 408.1,
8 409, 444, 444.1 and 445 of this Code or Section 12 of the Fire
9 Investigation Act on the date prescribed, including any
10 extensions, there shall be added as a penalty \$400 or 10% of
11 the amount of such tax, whichever is greater, for each month or
12 part of a month of failure to file, the entire penalty not to
13 exceed \$2,000 or 50% of the tax due, whichever is greater.

14 (3) (a) When any insurance company or any surplus line
15 producer fails to pay the full amount due under the
16 provisions of this Section, Sections 408.1, 409, 444, 444.1
17 or 445 of this Code, or Section 12 of the Fire
18 Investigation Act, there shall be added to the amount due
19 as a penalty an amount equal to 10% of the deficiency.

20 (b) If such failure to pay is determined by the
21 Director to be wilful, after a hearing under Sections 402
22 and 403, there shall be added to the tax as a penalty an
23 amount equal to the greater of 50% of the deficiency or 10%
24 of the amount due and unpaid for each month or part of a
25 month that the deficiency remains unpaid commencing with
26 the date that the amount becomes due. Such amount shall be
27 in lieu of any determined under paragraph (a).

28 (4) Any insurance company or any surplus line producer
29 which fails to pay the full amount due under this Section or
30 Sections 408.1, 409, 444, 444.1 or 445 of this Code, or Section
31 12 of the Fire Investigation Act is liable, in addition to the
32 tax and any penalties, for interest on such deficiency at the
33 rate of 12% per annum, or at such higher adjusted rates as are
34 or may be established under subsection (b) of Section 6621 of
35 the Internal Revenue Code, from the date that payment of any
36 such tax was due, determined without regard to any extensions,

1 to the date of payment of such amount.

2 (5) The Director, through the Attorney General, may
3 institute an action in the name of the People of the State of
4 Illinois, in any court of competent jurisdiction, for the
5 recovery of the amount of such taxes, fees, and penalties due,
6 and prosecute the same to final judgment, and take such steps
7 as are necessary to collect the same.

8 (6) In the event that the certificate of authority of a
9 foreign or alien company is revoked for any cause or the
10 company withdraws from this State prior to the renewal date of
11 the certificate of authority as provided in Section 114, the
12 company may recover the amount of any such tax paid in advance.
13 Except as provided in this subsection, no revocation or
14 withdrawal excuses payment of or constitutes grounds for the
15 recovery of any taxes or penalties imposed by this Code.

16 (7) When an insurance company or domestic affiliated group
17 fails to pay the full amount of any fee of \$200 or more due
18 under Section 408 of this Code, there shall be added to the
19 amount due as a penalty the greater of \$100 or an amount equal
20 to 10% of the deficiency for each month or part of a month that
21 the deficiency remains unpaid.

22 (Source: P.A. 93-32, eff. 7-1-03.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.