

AN ACT concerning regulation.

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

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

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

Sec. 412. Refunds; penalties; collection.

(1) (a) Whenever it appears to the satisfaction of the Director that because of some mistake of fact, error in calculation, or erroneous interpretation of a statute of this or any other state, any authorized company has paid to him, pursuant to any provision of law, taxes, fees, or other charges in excess of the amount legally chargeable against it, during the 6 year period immediately preceding the discovery of such overpayment, he shall have power to refund to such company the amount of the excess or excesses by applying the amount or amounts thereof toward the payment of taxes, fees, or other charges already due, or which may thereafter become due from that company until such excess or excesses have been fully refunded, or upon a written request from the authorized company, the Director shall provide a cash refund within 120 days after receipt of the written request if all necessary information has

been filed with the Department in order for it to perform an audit of the annual return for the year in which the overpayment occurred or within 120 days after the date the Department receives all the necessary information to perform such audit. The Director shall not provide a cash refund if there are insufficient funds in the Insurance Premium Tax Refund Fund to provide a cash refund, if the amount of the overpayment is less than \$100, or if the amount of the overpayment can be fully offset against the taxpayer's estimated liability for the year following the year of the cash refund request. Any cash refund shall be paid from the Insurance Premium Tax Refund Fund, a special fund hereby created in the State treasury.

(b) Beginning January 1, 2000 and thereafter, the Department shall deposit a percentage of the amounts collected under Sections 409, 444, and 444.1 of this Code into the Insurance Premium Tax Refund Fund. The percentage deposited into the Insurance Premium Tax Refund Fund shall be the annual percentage. The annual percentage shall be calculated as a fraction, the numerator of which shall be the amount of cash refunds approved by the Director for payment and paid during the preceding calendar year as a result of overpayment of tax liability under Sections 409, 444, and 444.1 of this Code and the denominator of which shall be the amounts collected pursuant to Sections 409, 444, and 444.1 of this Code during the preceding calendar

year. However, if there were no cash refunds paid in a preceding calendar year, the Department shall deposit 5% of the amount collected in that preceding calendar year pursuant to Sections 409, 444, and 444.1 of this Code into the Insurance Premium Tax Refund Fund instead of an amount calculated by using the annual percentage.

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

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

(2) When any insurance company or any surplus line producer fails to file any tax return required under Sections 408.1, 409, 444, 444.1 and 445 of this Code or Section 12 of the Fire Investigation Act on the date prescribed, including any extensions, there shall be added as a penalty \$400 or 10% of the amount of such tax, whichever is greater, for each month or

part of a month of failure to file, the entire penalty not to exceed \$2,000 or 50% of the tax due, whichever is greater.

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

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

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

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

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

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

(8) The Department shall have a lien for the taxes, fees, charges, fines, penalties, interest, other charges, or any portion thereof, imposed or assessed pursuant to this Code, upon all the real and personal property of any company or person to whom the assessment or final order has been issued or whenever a tax return is filed without payment of the tax or

penalty shown therein to be due, including all such property of the company or person acquired after receipt of the assessment, issuance of the order, or filing of the return. The company or person is liable for the filing fee incurred by the Department for filing the lien and the filing fee incurred by the Department to file the release of that lien. The filing fees shall be paid to the Department in addition to payment of the tax, fee, charge, fine, penalty, interest, other charges, or any portion thereof, included in the amount of the lien. However, where the lien arises because of the issuance of a final order of the Director or tax assessment by the Department, the lien shall not attach and the notice referred to in this Section shall not be filed until all administrative proceedings or proceedings in court for review of the final order or assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

Upon the granting of Department review after a lien has attached, the lien shall remain in full force except to the extent to which the final assessment may be reduced by a revised final assessment following the rehearing or review. The lien created by the issuance of a final assessment shall terminate, unless a notice of lien is filed, within 3 years after the date all proceedings in court for the review of the final assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted, or (in the case of a revised final assessment issued pursuant

to a rehearing or review by the Department) within 3 years after the date all proceedings in court for the review of such revised final assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted. Where the lien results from the filing of a tax return without payment of the tax or penalty shown therein to be due, the lien shall terminate, unless a notice of lien is filed, within 3 years after the date when the return is filed with the Department.

The time limitation period on the Department's right to file a notice of lien shall not run during any period of time in which the order of any court has the effect of enjoining or restraining the Department from filing such notice of lien. If the Department finds that a company or person is about to depart from the State, to conceal himself or his property, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the amount due and owing to the Department unless such proceedings are brought without delay, or if the Department finds that the collection of the amount due from any company or person will be jeopardized by delay, the Department shall give the company or person notice of such findings and shall make demand for immediate return and payment of the amount, whereupon the amount shall become immediately due and payable. If the company or person, within 5 days after the notice (or within such extension of time as the Department may grant), does not comply

with the notice or show to the Department that the findings in the notice are erroneous, the Department may file a notice of jeopardy assessment lien in the office of the recorder of the county in which any property of the company or person may be located and shall notify the company or person of the filing. The jeopardy assessment lien shall have the same scope and effect as the statutory lien provided for in this Section. If the company or person believes that the company or person does not owe some or all of the tax for which the jeopardy assessment lien against the company or person has been filed, or that no jeopardy to the revenue in fact exists, the company or person may protest within 20 days after being notified by the Department of the filing of the jeopardy assessment lien and request a hearing, whereupon the Department shall hold a hearing in conformity with the provisions of this Code and, pursuant thereto, shall notify the company or person of its findings as to whether or not the jeopardy assessment lien will be released. If not, and if the company or person is aggrieved by this decision, the company or person may file an action for judicial review of the final determination of the Department in accordance with the Administrative Review Law. If, pursuant to such hearing (or after an independent determination of the facts by the Department without a hearing), the Department determines that some or all of the amount due covered by the jeopardy assessment lien is not owed by the company or person, or that no jeopardy to the revenue exists, or if on judicial



review the final judgment of the court is that the company or person does not owe some or all of the amount due covered by the jeopardy assessment lien against them, or that no jeopardy to the revenue exists, the Department shall release its jeopardy assessment lien to the extent of such finding of nonliability for the amount, or to the extent of such finding of no jeopardy to the revenue. The Department shall also release its jeopardy assessment lien against the company or person whenever the amount due and owing covered by the lien, plus any interest which may be due, are paid and the company or person has paid the Department in cash or by guaranteed remittance an amount representing the filing fee for the lien and the filing fee for the release of that lien. The Department shall file that release of lien with the recorder of the county where that lien was filed.

Nothing in this Section shall be construed to give the Department a preference over the rights of any bona fide purchaser, holder of a security interest, mechanics lienholder, mortgagee, or judgment lien creditor arising prior to the filing of a regular notice of lien or a notice of jeopardy assessment lien in the office of the recorder in the county in which the property subject to the lien is located. For purposes of this Section, "bona fide" shall not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the

company or person mentioned in the notice of lien who executed such chattel or real property mortgage or the document evidencing such credit transaction. The lien shall be inferior to the lien of general taxes, special assessments, and special taxes levied by any political subdivision of this State. In case title to land to be affected by the notice of lien or notice of jeopardy assessment lien is registered under the provisions of the Registered Titles (Torrens) Act, such notice shall be filed in the office of the Registrar of Titles of the county within which the property subject to the lien is situated and shall be entered upon the register of titles as a memorial or charge upon each folium of the register of titles affected by such notice, and the Department shall not have a preference over the rights of any bona fide purchaser, mortgagee, judgment creditor, or other lienholder arising prior to the registration of such notice. The regular lien or jeopardy assessment lien shall not be effective against any purchaser with respect to any item in a retailer's stock in trade purchased from the retailer in the usual course of the retailer's business.

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

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