

## CHAPTER 87—H. F. No. 228

[Coded]

*An act relating to insurance; providing for assessment and collection of tax and payment of refunds; appropriating money therefor.*

Be it enacted by the Legislature of the State of Minnesota:

**Section 1. [60.631] Examination of returns; assessments, refunds.** The commissioner of insurance shall, as soon as practicable after a return required by section 60.63 is filed, examine the same and make any investigation or examination of the company's records and accounts that he may deem necessary for determining the correctness of the return. The tax computed by him on the basis of such examination and investigation shall be the tax to be paid by such company. If the tax found due shall be greater than the amount reported as due on the company's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the state treasurer within 30 days after notice of the amount and demand for its payment shall have been mailed to the company by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the company on its return which have not yet been paid shall be paid to the state treasurer within 30 days after notice of the amount thereof and demand for payment shall have been mailed to the company by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the company's return, the excess shall be refunded to the company in the manner provided by section 5 (except that no demand therefor shall be necessary), if they have already paid the whole of such tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in section 5, after the expiration of three and one-half years after the filing of the return.

If the commissioner examines returns of a company for more than one year, he may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by section 1 to 3 shall be in such form as the commissioner may determine (including a statement) and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the company at the address given in its return, if any, and if no such address is given, then to the last known address.

**Changes or additions indicated by *italics*, deletions by ~~strikeout~~.**

Sec. 2. **[60.632] Assessment; failure to file return, false or fraudulent return filed.** If any company required by section 60.63 to file any return shall fail to do so within the time prescribed or shall make, wilfully or otherwise, an incorrect, false, or fraudulent return, it shall, on the written demand of the commissioner of insurance, file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such company shall fail within that time to file such return, or corrected return, the commissioner shall make for it a return, or corrected return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within ten days after the commissioner has mailed to such company a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the company to make a return, or a corrected return, shall be prima facie correct and valid, and the company shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Sec. 3. **[60.633] Collection of tax.** The tax required to be paid by section 60.63 may be collected in an ordinary action at law by the commissioner of insurance against the company. In any action commenced pursuant to this section, upon the filing of an affidavit of default, the clerk of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Sec. 4. **[60.634] Appeals.** Either party to an action or a judgment for the recovery of any taxes, interest, or penalties under section 3 may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

Sec. 5. **[60.635] Overpayments, claims for refund.** Subdivision 1. **Procedure, time limit, appropriation.** A company who has paid, voluntarily or otherwise, or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner of insurance a claim for a refund of such excess. Except as provided in subdivision 4 no such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer.

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Upon the filing of a claim the commissioner of insurance shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof to the company at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the company, with interest at the rate of two percent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the company, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by section 60.63, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

**Subd. 2. Denial of claim, court proceedings.** If the claim is denied in whole or in part, the company may commence an action against the commissioner to recover any overpayments of taxes claimed to be refundable but for which the commissioner has issued no certificate of refundment. Such action may be brought in the district court of the district in which lies the county of its principal place of business, or in the district court for Ramsey county. Such action may be commenced after the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim.

**Subd. 3. Denial of claim, appeal.** Either party to said action may appeal to the supreme court as in other cases.

**Subd. 4. Consent to extend time.** If the commissioner and the company have within the periods prescribed in subdivision 1 consented in writing to any extension of time for the assessment of the tax, the period within a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the company have consented to an extension for the assessment of the tax and six months thereafter, provided, however, that the period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

**Subd. 5. Overpayments; refunds.** If the amount determined to be an overpayment exceeds the taxes imposed by section 60.63 the amount of such excess shall be considered an overpayment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which such amount was paid.

Notwithstanding any other provision of law to the contrary, in the case of any overpayment the commissioner of insurance, within the

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applicable period of limitations, shall refund any balance of more than one dollar to such company if the company shall so request.

Approved March 20, 1963.

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CHAPTER 88—H. F. No. 229

*An act relating to insurance; changing certain dates for payment of tax, and providing for interest and penalties in certain cases; amending Minnesota Statutes 1961, Sections 60.518; and 60.63, Subdivisions 2, 3, 4, and 8; and 73.20.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1961, Section 60.518, is amended to read:

60.518 **License fee.** This attorney, in lieu of all taxes, state, county, and municipal, shall pay to the state with the filing of each annual report *on or before March 1* as an annual license fee two percent of the gross premiums or deposits for the preceding calendar year, deducting all amounts returned to subscribers or credited to their accounts; and he shall pay a filing fee of \$2. *If unpaid March 1, annually, a penalty of ten percent shall accrue thereon and thereafter such sum and penalty shall draw interest at the rate of one percent per month until paid.*

Sec. 2. Minnesota Statutes 1961, Section 60.63, Subdivision 2, is amended to read:

Subd. 2. Every domestic and foreign company, except town and farmers' mutual insurance companies and domestic mutual insurance companies other than life, shall pay to the state treasurer on or before ~~April 30th~~ *March 1* annually a sum equal to two percent of the gross premiums less return premiums on all direct business received by it in this state, or by its agents for it, in cash or otherwise, during the preceding calendar year, excepting premiums written for marine insurance as specified in subdivision 6. If unpaid by such date a penalty of ten percent shall accrue thereon, and thereafter such sum and penalty shall draw interest at the rate of one percent per month until paid.

Sec. 3. Minnesota Statutes 1961, Section 60.63, Subdivision 3, is amended to read:

Subd. 3. Every domestic mutual insurance company shall pay to the state treasurer on or before ~~April thirtieth~~ *March 1* annually

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