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HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS

BILL #: HB 283

RELATING TO: Insurance Taxes/Overpayment Refund Date

SPONSOR(S): Representative Dockery

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) INSURANCE
(2)
(3)
(4)
(5)

I. SUMMARY:

The Department of Revenue is not authorized to pay refunds for overpayment of certain insurance taxes before the first day of the fiscal year following the date the tax was due. Effective since January 1, 2000, the Department has been required to pay interest on overpayments not returned to insurers within 90 days from the date a refund application is filed. Thus, the Department of Revenue will have to pay interest to all insurers that file more than 90 days before the end of the fiscal year.

The bill would revise the time frame within which the Department of Revenue pays refunds of certain insurance tax overpayments. The Department would be required to refund overpayments:

(1) no later than 60 days after the first day of the fiscal year following the date the taxes were due, or;

(2) no later than 60 days after a refund application is filed, if the insurer applies for the refund after the first day of the fiscal year following the date the taxes were due.

The Department would no longer be required to wait until the first day of the subsequent fiscal year to pay refunds.

There would be no fiscal impact on local governments. However, the bill should provide some relief to the Department of Revenue by reducing the number of instances in which it is required to pay interest.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [] N/A []
2. Lower Taxes Yes [] No [] N/A []
3. Individual Freedom Yes [] No [] N/A []
4. Personal Responsibility Yes [] No [] N/A []
5. Family Empowerment Yes [] No [] N/A []

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Insurers are required to pay taxes to the Department of Revenue (Department) on insurance premiums, risk premiums for title insurance, annuity premiums or considerations, and various assessments received during the previous calendar year. Insurers must also pay a gross underwriting profit tax to the Department on wet marine and transportation insurance. Insurers pay quarterly estimates of these taxes, and when they file their annual return may request repayment of any overpayment of taxes.

The Department's Insurance Premium Tax Return is a complex 21-page document. Of these twenty-one pages, instructions for completing and filing the return comprise eleven pages. The return also contains 16 different schedules for determining taxes due, various credits and credit limitations, fees, surcharges and trust fund contributions. In addition, some insurers may be required to attach copies of as many as 9 separate documents to their returns, several of which are returns for other taxes and forms required by the Florida Department of Labor and Employment Security. The complexity of this tax return and the involvement of a second state agency may raise issues or circumstances hindering the Department's ability to process refund applications in a short period of time.

When tax estimates are incorrect, and insurers overpay these taxes, they are entitled to a refund of the amount overpaid, but the Department is prohibited from paying any refund before the first day of the state fiscal year following the date the tax was due. In other words, even though payment of these taxes is due by March 1 each year, and the Department may be ready, willing and able to pay a refund before July 1, it is nonetheless prohibited from doing so until the beginning of the new fiscal year (July 1).

While the Department is prohibited from paying a refund before a certain date, nothing limits the amount of time it may hold overpayments before repaying them. Although, since January 1, 2000, the Department has been required to pay interest on overpaid taxes beginning 90 calendar days after it has received a complete refund application. If an application is not complete, or the Department decides to conduct an audit, then the running of the 90 days is tolled, and interest will not begin to accrue until the application or audit is complete.

Since the Department is not authorized to pay a refund before the first day of the state fiscal year (July 1) beginning after the date the tax was due (March 1), and the new statutory interest requirement imposes interest on all overpayments beginning 90 days after receipt of a refund application, the Department may be required pay interest on any overpaid accounts where a complete application for refund was filed simultaneously with the tax return. Since the insurance premium tax return in most cases is deemed a request for a refund when the taxes have been overpaid, the Department is required to pay interest on virtually every overpayment of insurance premium taxes, despite its readiness to refund overpayment within the 90-day period. Approximately 40 percent of the insurance premium tax returns filed in fiscal years 1997-98 and 1998-99 resulted in refunds. In the 1997-98 fiscal year, the Department paid 767 refunds amounting to $31.1 million, and in 1998-99 paid 803 refunds amounting to $45.5 million.

C. EFFECT OF PROPOSED CHANGES:

The Department of Revenue would be required to refund these overpaid insurance taxes no later than sixty (60) days after the first day of the fiscal year following the date the tax is due. If the insurer requested a refund after the first day of the following fiscal year, then the refund of overpaid taxes would have to be made within sixty (60) days of the request. Furthermore, by eliminating the requirement that the Department of Revenue wait until the beginning of the subsequent fiscal year to refund these taxes, the bill would reduce the amount and frequency of required interest payments.

Since the filing of the tax return and the request for a refund of overpaid taxes usually occur simultaneously no later than March 1 (the returns themselves are deemed applications for refund), the Department would be required to pay a refund within a period of approximately 180 days (the number of days between March 1 and July 1 plus 60 days), with interest likely accruing if a refund is not paid within 90 days after the filing date. However, if an insurer files a request for a refund of overpaid taxes close to, on, or later than July 1, or must file an amended return, the length of time the Department would have to pay refunds could be substantially shortened to as little as 60 days.

For the purposes of illustration, some examples follow:

Under scenario one, the insurer files its return and refund request on March 1, 2000, the date the tax is due.

	current law	proposed
1) authorized to pay	July 1, 2000	After March 1, 2000
2) interest accrual (91 days)	May 30, 2000	May 30, 2000
3) payment deadline	None*	August 30, 2000

Note that under current law the Department must wait until the new fiscal year to make a refund. Also note that there is no deadline by which the Department must pay a refund.

Under scenario two, the insurer requests a refund after July 1, 2000, the first day of the new fiscal year.

	current law	proposed
1) authorized to pay	After request	After request
2) interest accrual (91 days)	Sept. 30, 2000	none
3) payment deadline	None*	August 30, 2000

Note that under the bill no interest would ever accrue in this scenario because payment must be made within 60 days of the refund request. Note also that while under current law there is not a deadline for refund payment, under the bill there would be a very short time-period for the Department to process refund requests.

* Under current law, no date-certain exists, by which the Department must pay a refund, but the 90-day interest requirement applies.

The bill does not provide penalties or sanctions if refunds are not paid within the specified period.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Since the bill eliminates the prohibition against refunds being paid before the first day of the fiscal year after the taxes are due, it provides relief to the Department of Revenue from mandatory interest. The Department has not captured data tracking the length of time it takes to process and make refunds of overpaid taxes, therefore, it has not estimated the amount of interest it will pay to insurers who overpay. Neither has it estimated the amount of savings in interest payments this bill would provide by eliminating the prohibition against payment of refunds before July 1. Furthermore, because it is impossible to determine how many insurers will be entitled to refunds, how much the insurers will overpay, and how many refunds will take longer than 90 days to process, the cost savings in insurance payments is indeterminate without making various assumptions. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not impact revenues collected by local governments.

2. Expenditures:

This bill does not require any expenditure by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because the bill requires payment of a refund within a specified time period, insurers may save on administrative and professional costs generated by a lengthy refund process. Also, the bill may reduce the opportunity cost to insurers that are not free to invest their money while the state controls it.

D. FISCAL COMMENTS:

During the 1998-99 fiscal year, the Department of Revenue paid $45.5 million in refunds for overpaid insurance premium taxes. Assuming that the Department will pay a similar amount during later fiscal years, and assuming that roughly 90 percent of that amount, or approximately $41 million represents refunds to insurers who filed complete returns on March 1 so that the refund request was made simultaneously, it is possible to roughly estimate the amount HB 283 would save the Department in mandatory interest payments using the 8 percent monthly interest rate applied by the Department.

Under present law and the above assumptions, $41 million in refunds is subject to the payment of interest for a period of approximately one month between the running of the 90-day interest-free period and the start of the fiscal year on July 1. At a rate of 8 percent, approximately $3,280,000 of interest accrues. The Department would be responsible for this amount despite its readiness or willingness to refund overpaid taxes withing the 90-day interest-free period. However, under the bill, the Department would no longer be required to wait until the beginning of the new fiscal year to make refunds. Thus, it would be relieved of paying a large portion of the estimated $3,280,000 it must pay under current law.

Assuming that the Department does not refund 10 percent of the total requests within the 90-day period, it would only have to pay $328,000 in interest. Therefore, the bill would save the Department approximately $2.95 million in mandatory interest payments.

Note: These fiscal comments use many assumptions of questionable accuracy, and should not be relied on as a definitive statement of the Department of Revenue’s potential mandatory interest savings. Rather the comments are meant to outline a basic methodology for determining the bill’s impact on the Department in the absence of empirical data.

IV. <u>CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION</u>:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. <u>COMMENTS</u>:

A. CONSTITUTIONAL ISSUES:

This bill does not raise constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not address an agency's rule-making authority.

C. OTHER COMMENTS:

VI. <u>AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES</u>:

N/A

VII. <u>SIGNATURES</u>:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Staff Director:
William C. Garner	Stephen T. Hogge