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STATE OF OKLAHOMA

WORKERS' COMPENSATION COMMISSION

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MEMORANDUM

OFFICE OF THE CHAIRMAN

TO: Workers' Compensation Payors

FROM: Robert Gilliland, Chairman, Workers' Compensation Commission

DATE: June 17, 2015

SUBJECT: Executive Order 2015-28

The Workers' Compensation Commission advises you that Governor Fallin signed Executive Order 2015-28 on June 1, 2015 affecting rebates under 68 O. S. § 6101.

I enclose a copy of Governor Fallin's Executive Order for your review.



Mary Fallin
Governor

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OKLAHOMA SECRETARY
OF STATE

EXECUTIVE DEPARTMENT
EXECUTIVE ORDER 2015-28

Today I signed House Bill 2238, which clarifies funding for the Workers' Compensation system of Oklahoma and remedies the lack of clear legislative intent regarding a refund of payments to the Multiple Injury Trust Fund.

Prior to 2011, the Multiple Injury Trust Fund was funded by assessments of insurance carriers writing workers' compensation insurance in Oklahoma. The assessment was determined by a statutory framework contained within 85 O.S. § 173. The law, prior to 2011, also contained a rebate procedure for these assessed insurance carriers. 68 O.S. § 6101 provided that "parties required to pay an assessment pursuant to Section 173 of Title 85 of the Oklahoma Statutes shall be entitled to receive a rebate equal to two-thirds (2/3) of the amount of the assessment actually paid, subject to application to and approval of the same by the Oklahoma Tax Commission." (emphasis added). Thus, to receive a rebate, an insurance company had to qualify as an entity that was subject to assessment in 85 O.S. § 173.

In 2011, Senate Bill 878, a redrafting of workers' compensation law, specifically repealed 85 O.S. § 173. The assessment determination was modified and then codified at 85 O.S. § 403. This modification resulted in the loss of a statutory basis to pay a rebate to an insurance company, since no company could claim that it was subject to assessment pursuant to 85 O.S. § 173 (a repealed statute). However, Senate Bill 878 expressed no clear intent whether the repeal of 85 O.S. § 173 was intended to repeal the rebate contained within 68 O.S. § 6101. The Oklahoma Tax Commission continued to pay the 68 O.S. § 6101 rebate to an insurance company if it could demonstrate that it had been assessed pursuant to the new statute, 85 O.S. § 403.

In 2013, Senate Bill 1062 specifically repealed 85 O.S. § 403. The assessment determination was again modified and then codified at 85A O.S. § 31. However, Senate Bill 1062 did not express a clear intent as to whether the repeal of 85 O.S. § 403 was intended to repeal the rebate contained within 68 O.S. § 6101. The Oklahoma Tax Commission continued to pay the 68 O.S. § 6101 rebate to an insurance company if it could demonstrate that it had been assessed pursuant to the new statute, 85A O.S. § 31.

Today with the signing of House Bill 2238, the intent of the Legislature is made clear as to the rebate provisions contained within 68 O.S. § 6101. Based on increased funding included in the budget, language in Section 3 of the bill which removes billing restrictions, and discussions of legislative intent during budget negotiations with this office, I recognize and concur with the Legislature that the Oklahoma Tax Commission should no longer process the rebate of the Multiple Injury Trust Fund assessments pursuant to 68 O.S. § 6101. It appears that previous

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legislative intent may well have been for the rebate to have been paid between 2011 and this date. However, that is no longer the case.

I hereby direct that as a result of House Bill 2238, future rebate claims pursuant to 68 O.S. § 6101 shall not be accepted by the Oklahoma Tax Commission.

This Executive Order shall be distributed to the Director of the Oklahoma Tax Commission and the Director of the Multiple Injury Trust Fund, who shall cause the provisions of this Order to be implemented as herein directed.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 1st day of June, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA


MARY FALLIN

ATTEST:


SECRETARY OF STATE

