§ 9109. Refunds and penalties. (a) (1) Whenever the superintendent is satisfied that because of cancellations, some mistake of fact, error in calculation, or erroneous interpretation of a statute of this or any other state, any authorized insurer or excess line broker 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 three year period immediately preceding the cancellations or the discovery of such overpayment, he shall refund to such insurer or excess line broker the amount of such excess by applying the amount toward the payment of taxes, fees or other charges already due or which may become due from such insurer until such excess has been fully refunded or at his discretion make a cash refund. The excess line broker shall pay the insured any refund of premium tax returned to such excess line broker if such taxes were originally collected from the insured. Such cash refund may be paid from any moneys not turned over to the department of taxation and finance pursuant to the provisions of the state finance law.

(2) The superintendent shall retain from the taxes collected pursuant to this article an amount sufficient to provide at all times a fund not to exceed ten thousand dollars out of which he shall pay any refunds to which taxpayers shall be entitled under this article.

(b) (1) If a company, association or person fails within the prescribed time to file any report or statement required by this article or by section two thousand one hundred eighteen of this chapter, or to make any payment due under the provisions of this article or sections three hundred thirty-three, one thousand one hundred twelve, two thousand one hundred five, two thousand one hundred eighteen or four thousand four hundred seven of this chapter or section two hundred six of the financial services law, the superintendent may order such company, association or person to pay to the people of this state the following penalties:

(A) not less than one hundred nor more than five hundred dollars for each and every failure to file a report or statement within the time prescribed;

(B) five percent of the principal amount of any payment due plus an additional one percent of said sum for the second and subsequent months or fractions thereof during which payment has not been made.

(2) The superintendent may, in his discretion, waive or remit all or any part of such penalties if he finds that delay was excusable.