

# Premium Tax Update

**Presented to  
Revenue Stabilization and Tax Policy  
Committee**

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By

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# Taxpayers (Insurance Companies) Subject to Premium Tax

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Basically, premium taxes are applicable to Insurance Companies, HMO's, Mexican Casualty Companies, Non-Profit Health Care Plans, Prepaid Dental Plans, Property Bail Bond Agents, Purchasing Groups, Risk Retention Groups, Self-Insured's, and Title Insurance Companies.

According to statute, the following are subject to premium taxes.

Section 59A-6-2  
NMSA 1978 (Items 1-5)

3: Chapter 59A  
Articles 46-49  
NMSA 1978

4: Section 59A-51-2  
NMSA 1978

5: Section 59A-55-6  
NMSA 1978

- 1) Each insurer authorized to transact insurance in New Mexico
- 2) Each insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in NM
- 3) Each plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978 (Health Maintenance Organizations (HMOs), Nonprofit Health Care Plans, Prepaid Dental Plans, or Prearranged Funeral Plans
- 4) Each property bondsman, as defined in statute
- 5) Each unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in NM, except if a ceding insurer continues to pay the tax provided in this section as to such policy or contract.

# Premium Tax Rate (Insurance)

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Section 59A-6-2(B)

**3.003%**

**of the gross premiums and membership and policy fees** received or written by it, as reported in Schedule T and supporting schedules of its annual financial statement **on insurance contracts covering risks within this state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on NM risks.**

Premiums specifically include any additional amount charged the insured, including policy fees, risk purchasing group fees, and inspection fees, but do not include any additional amounts charged the insured for local, state, or federal tax, regulatory authority fees, or examination fees.

Section 59A-14-12  
NMSA1978

# Health Insurance Premium Surtax (In addition to Premium Tax)

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Section 59A-6-2(C)  
NMSA 1978

## 1.0%

Each taxpayer that is authorized to transact **health insurance in New Mexico or is an HMO or nonprofit health care plan is subject to a surtax of 1%** of the gross health insurance premiums and membership and policy fees received by it on health insurance or contracts, covering health risks within New Mexico during the preceding calendar year,

- excluding dental or vision only contracts, (notable difference between the premium tax and surtax calculations)
- **less all return health insurance premiums, including dividends paid or credited to policyholders or contract holders and health insurance premiums received for reinsurance on New Mexico risks**

# Combined Premium Tax Rates for Health Insurers

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- Insurance Premium Tax 3.003%
- Insurance Premium Surtax 1.0%
- Combined Tax Rate 4.003%

# Premiums Exempt from Premium Tax

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Section 59A-6-2 (E)  
NMSA 1978

Annotation of  
Section 59A-6-2  
NMSA 1978

Attorney General  
Opinion No. 79-38,  
November 8, 1979

Exempted from the New Mexico insurance premiums tax and health insurance premiums surtax are:

- 1) premiums attributable to insurance or contracts purchased by the state or a political subdivision for the state's or political subdivision's active or retired employees; and
  - 2) payments received by a health maintenance organization from the federal secretary of Health and Human Services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g) (e.g. Federal Employee Programs)
- ❖ Self-insured employer under Workmen's Compensation Act is not an insurance company transacting insurance business and therefore is not subject to the premium tax.

# Premium Tax In Lieu of Other Taxes

Section 59A-6-6  
NMSA 1978

Attorney General  
Opinion No. 47-5038,  
June 11, 1947

The state government of New Mexico preempts the field of taxation of insurers, nonprofit health care plans, health maintenance organizations, prepaid dental plans, prearranged funeral plans and insurance agents and solicitors as such; and payment of the taxes, licenses and fees provided for in the Insurance Code shall be in lieu of all other taxes, licenses and fees of every kind now or hereafter imposed by this state or any political subdivision thereof on any of the foregoing specified entities, excepting the regular state, county and city taxes on property located in New Mexico excepting the income tax on agents and solicitors. As used in this section, "agent" does not include insurance adjusters.

The state's insurance premiums tax on an insurance company is in lieu of all other taxes, except a tax on property located in New Mexico.

# Premium Tax & Health Insurance Premium Surtax Due Dates

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Section 59A-6-2(D)  
NMSA 1978

All Premium Taxes including the Surtaxes are to be paid quarterly based on at least 25% of either the preceding calendar years tax paid or 80 % of the actual payment due for the current calendar year, whichever is greater. (Final adjustments are made on the April 15<sup>th</sup> final return.)

- **April 15<sup>th</sup>:** Premium Tax Final (from the preceding calendar year) & Premium Tax 1<sup>st</sup> quarter (current year)
- **July 15<sup>th</sup>:** Premium Tax 2<sup>nd</sup> quarter (current year)
- **October 15<sup>th</sup>** Premium Tax 3<sup>rd</sup> quarter (current year)
- **January 15<sup>th</sup>** Premium Tax 4<sup>th</sup> quarter (current year)

# How Premium Taxes and Surtaxes are Filed/Paid

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## Premium Tax Forms of Insurance Division:

Form 306	Quarterly for Life and Health, Casualty, Property, and Vehicle
Form 300	Final Life & Health (Section 59A-7-2 &3 NMSA 1978)
Form 301	Final Casualty (Section 59A-7-4 NMSA 1978)
Form 302	Final Property (Section 59A-7-6 NMSA 1978)
Form 303	Final Vehicle Section (59A-7-7 NMSA 1978)
Form 308	Quarterly for Self-Procured (Section 59A-15-4 NMSA 1978)
Form 309	Quarterly for Self-Insured (Section 59A-6-2(5) NMSA 1978)

- ✓ Annual Return Filed
- ✓ Tax Deductions
- ✓ Tax Credits
- ✓ Tax Payments

# Premium Tax Return Deductions

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Section 59A -6-2 (B)  
NMSA 1978

- Return Premiums
- Political Subdivisions
  - Federal Health Benefits Program Premiums
  - Other State Funded Program Premium (e.g. cities and counties)
- Dividends paid/credited to policyholders
- Premiums received from authorized companies for reinsurance on NM risks

# Premium Tax Credits

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Section 59A-54-10(A)  
NMSA 1978

- The New Mexico Comprehensive Health Insurance Pool Administrator will annually assess an insurer for the losses and administrative expenses of the state's **Medical Insurance Pool**.

Section 59A-54-10(C)  
NMSA 1978

- **Premium Tax Credits for Pool Payments**
  - **Medical Insurance Pool Payment – 50% tax credit**
  - **Medical Insurance Pool Payment – 75% tax credit** (for the assessments attributable to pool policy holders that receive premiums, in whole or in part through the federal Ryan White Care Act, the Ted R. Montoya hemophilia program of UNM Health Sciences Center, the children's medical services bureau of the public health division of the Department of Health or other program receiving state funding or assistance.)
  - **Health Alliance Pool Payments – 50% tax credit**

Section 59A-56-11(F)  
NMSA 1978

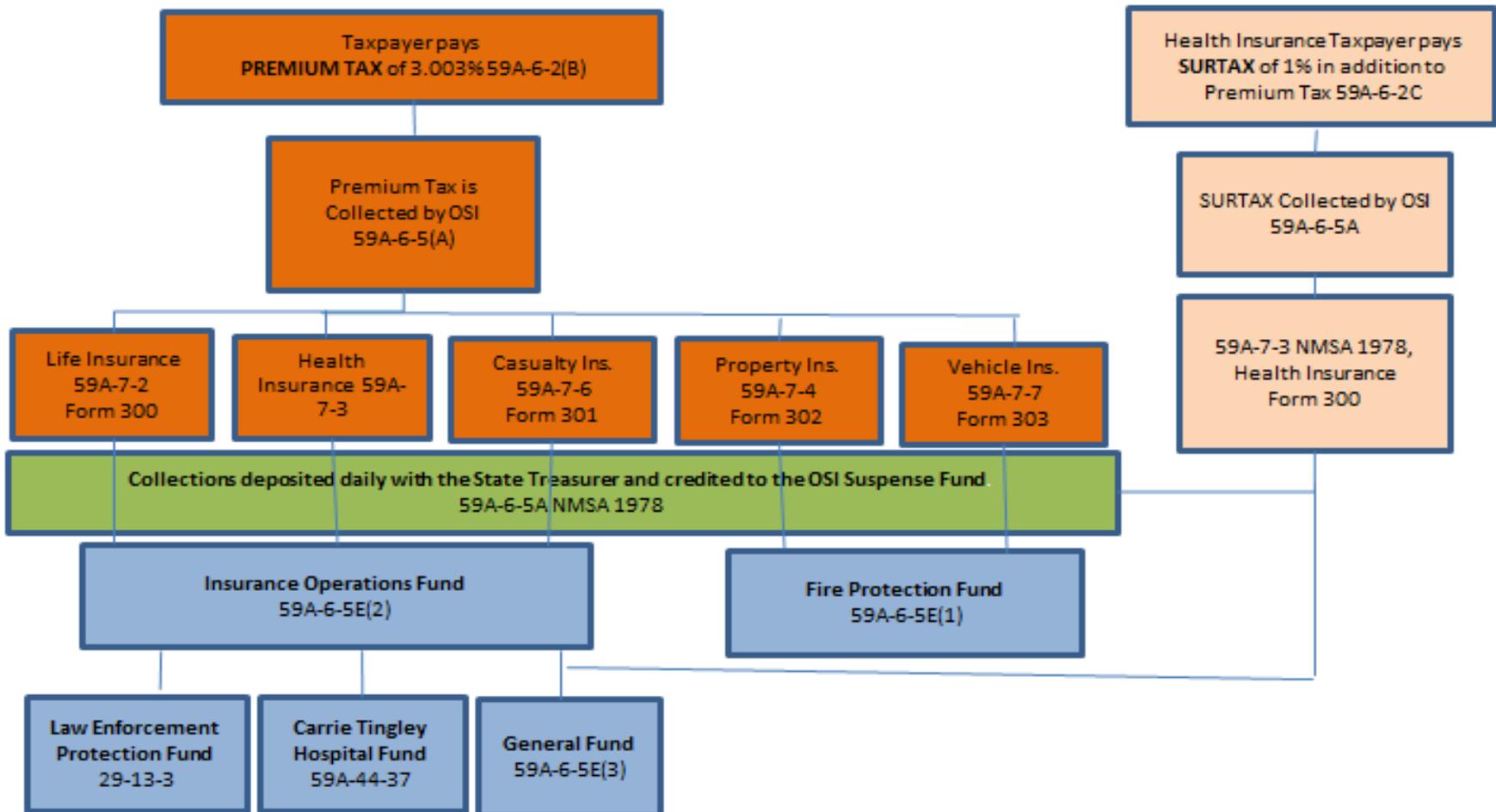
# Premium Tax Refunds / Overpayments

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Section 59A-6-5(B)  
NMSA 1978

- The Superintendent of Insurance may authorize a refund of money erroneously paid as fees, licenses, penalties, or taxes from the state's Insurance Department Suspense Fund upon a request for refund made within three years after the erroneous payment
- In the case of a premium tax erroneously paid or overpaid, a refund may also be requested as a credit against the state insurance premium tax due in any annual or quarterly premiums tax return filed within three years of the erroneous or excess payment

# Flow Chart on Premium Tax and Surtax

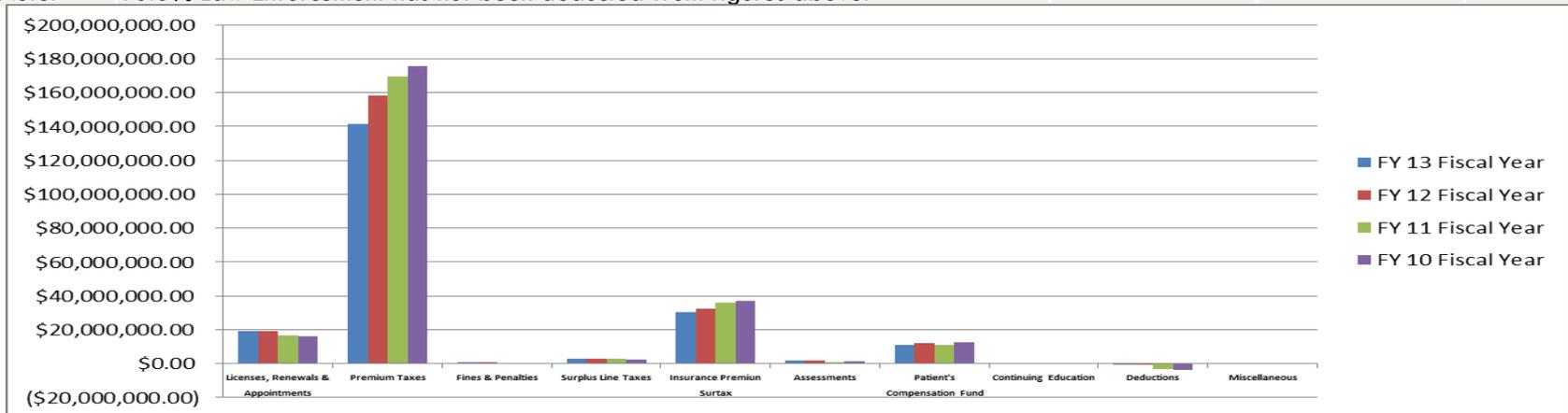


# Revenue Processed Fiscal Years 2010 – 2013

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Annual Comparison Report					
	FY 13	FY 12	FY 11	FY 10	
	<u>Fiscal Year</u>	<u>Fiscal Year</u>	<u>Fiscal Year</u>	<u>Fiscal Year</u>	
Licenses, Renewals & Appointments	\$19,178,370.50	\$19,112,366.71	\$16,758,130.50	\$16,243,529.85	
Premium Taxes	\$141,387,833.53	\$158,244,626.84	\$169,341,739.67	\$175,777,003.78	
Fines & Penalties	\$843,126.59	\$958,488.66	\$231,044.54	\$310,673.68	
Surplus Line Taxes	\$2,689,433.16	\$2,757,858.76	\$2,704,626.30	\$2,445,902.27	
Insurance Premium Surtax	\$30,445,982.31	\$32,686,568.82	\$36,049,652.90	\$36,876,183.34	
Assessments	\$2,142,551.11	\$1,682,720.43	\$810,861.95	\$1,365,835.97	
Patient's Compensation Fund	\$11,134,060.45	\$12,188,092.37	\$10,855,690.27	\$12,733,122.99	
Continuing Education	\$97,167.00	\$98,563.60	\$106,418.10	\$107,803.40	
Deductions	(\$634,670.34)	(\$499,326.16)	(\$3,038,003.51)	(\$3,528,756.34)	
Miscellaneous	<u>\$3,780.15</u>	<u>\$55,113.67</u>	<u>\$23,389.38</u>	<u>\$55,316.32</u>	
Grand Total:	\$207,287,634.46	\$227,285,073.70	\$233,843,550.10	\$242,386,615.26	

Note: 10.0% Law Enforcement has not been deducted from figures above.



# Insurance Suspense Fund & Collection of Premium Taxes and Surtaxes

## Fiscal Years 2007 – 2013

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	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
<b>INSURANCE SUSPENSE FUND*</b>	<b>\$190,304,008.49</b>	<b>\$196,682,074.00</b>	<b>\$206,613,666.29</b>	<b>\$231,848,534.56</b>	<b>\$226,836,581.77</b>	<b>\$213,814,966.46</b>	<b>\$184,925,346.74</b>
LESS MEDICAL SAVINGS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>GENERAL FUND</b>	<b>\$190,304,008.49</b>	<b>\$196,682,074.00</b>	<b>\$206,613,666.29</b>	<b>\$231,848,534.56</b>	<b>\$226,836,581.77</b>	<b>\$213,814,966.46</b>	<b>\$184,925,346.74</b>
LESS DISHONORED CHECKS	(\$9,681.89)	(\$33,796.00)	(\$1,828.16)	(\$10,941.00)	(\$15,523.26)	(\$56,031.16)	(\$42,092.27)
LESS REFUNDS	(\$967,347.65)	(\$1,026,752.78)	(\$1,446,085.18)	(\$3,514,749.57)	(\$3,030,979.88)	(\$443,295.00)	(\$592,578.07)
LESS TRANSFER TO SECY OF STATE	(\$682,028.36)	(\$100,818.00)	(\$876,390.03)	(\$800.00)	(\$192,000.00)	\$0.00	\$0.00
<b>INSURANCE SUSPENSE FUND SUB-TOTAL</b>	<b>\$188,644,950.59</b>	<b>\$195,520,707.22</b>	<b>\$204,289,362.92</b>	<b>\$228,322,043.99</b>	<b>\$223,598,078.63</b>	<b>\$213,315,640.30</b>	<b>\$184,290,676.40</b>
ADD:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>BALANCE</b>	<b>\$188,644,950.59</b>	<b>\$195,520,707.22</b>	<b>\$204,289,362.92</b>	<b>\$228,322,043.99</b>	<b>\$223,598,078.63</b>	<b>\$213,315,640.30</b>	<b>\$184,290,676.40</b>
<b>INSURANCE OPERATION FUND</b>	<b>(\$6,799,607.06)</b>	<b>(\$7,552,664.21)</b>	<b>(\$8,264,136.95)</b>	<b>(\$8,275,775.03)</b>	<b>(\$8,947,111.36)</b>	<b>(\$9,338,127.58)</b>	<b>(\$9,619,969.35)</b>
<b>FIRE PROTECTION FUND</b>	<b>(\$62,169,362.42)</b>	<b>(\$64,815,369.60)</b>	<b>(\$68,224,527.94)</b>	<b>(\$66,430,881.98)</b>	<b>(\$67,452,200.20)</b>	<b>(\$68,576,625.55)</b>	<b>(\$71,006,406.59)</b>
<b>CARRIE TINGLEY</b>	<b>(\$12,490.00)</b>	<b>(\$18,170.00)</b>	<b>(\$23,713.00)</b>	<b>(\$33,223.00)</b>	<b>(\$25,673.00)</b>	<b>(\$27,514.00)</b>	<b>(\$30,220.00)</b>
<b>NM FINANCE AUTHORITY</b>	<b>(\$1,395,203.00)</b>	<b>(\$1,681,413.91)</b>	<b>(\$1,761,417.00)</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>INSURANCE SUSPENSE FUND LESS DIST.</b>	<b>\$118,268,288.11</b>	<b>\$121,453,089.50</b>	<b>\$126,015,568.03</b>	<b>\$153,582,163.98</b>	<b>\$147,173,094.07</b>	<b>\$135,373,373.17</b>	<b>\$103,634,080.46</b>
<b>X 10% TO LAW ENFORCEMENT FUND (LEF)</b>	<b>(\$11,826,828.93)</b>	<b>(\$12,145,309.07)</b>	<b>(\$12,601,556.93)</b>	<b>(\$15,358,216.55)</b>	<b>(\$14,717,309.55)</b>	<b>(\$13,537,337.32)</b>	<b>(\$8,280,806.75)</b>
<b>ENFORCEMENT FUND</b>							
<b>INSURANCE SUSPENSE FUND LESS LEF</b>	<b>\$106,441,459.18</b>	<b>\$109,307,780.43</b>	<b>\$113,414,011.10</b>	<b>\$138,223,947.43</b>	<b>\$132,455,784.52</b>	<b>\$121,836,035.85</b>	<b>\$95,353,273.71</b>
<b>PLUS MEDICAL SAVINGS</b>	<b>\$0.00</b>						
<b>REVERSION TO GENERAL FUND</b>	<b>\$106,441,459.18</b>	<b>\$109,307,780.43</b>	<b>\$113,414,011.10</b>	<b>\$138,223,947.43</b>	<b>\$132,455,784.52</b>	<b>\$121,836,035.85</b>	<b>\$95,353,273.71</b>

\*The figures below are included in Ins. Sus. Fund.

Note: Premium taxes are only a portion what is received into the Insurance Suspense Fund.

There are other fees, penalties, etc. that are included in the numbers above and impact the various transfers.

<b>PREMIUM TAX AND SURTAX FOR INSURANCE</b>	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
PREMIUM TAX (Insurance) Line Item 54	\$94,004,901.25	\$95,888,341.86	\$94,520,801.05	\$116,090,692.33	\$109,832,775.93	\$98,392,182.53	\$78,752,491.94
SURTAX Health Insurance Line Item 53	\$21,828,222.87	\$22,955,163.16	\$28,382,370.99	\$36,876,183.34	\$36,061,780.31	\$32,686,568.82	\$30,445,982.31
PREMIUM TAX FIRE FUND Line Item 78	\$56,581,609.44	\$59,165,662.60	\$60,413,287.15	\$59,686,311.45	\$60,080,801.97	\$59,852,444.31	\$62,635,341.59
<b>Totals</b>	<b>\$172,414,733.56</b>	<b>\$178,009,167.62</b>	<b>\$183,316,459.19</b>	<b>\$212,653,187.12</b>	<b>\$205,975,358.21</b>	<b>\$190,931,195.66</b>	<b>\$171,833,815.84</b>

# Consideration of Potential Legislation

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- ✓ Estimated Tax Payments
  - Calculated on Gross Tax Due vs. Net Tax Due
  - Written vs. Earned vs. Received Premiums (Example: Write policy in December, Earn in January, Receive payment in February)
  - Permanent overpayment balance issue
  
- ✓ If the Insurance Pool is no longer required as a result of healthcare reform, both the assessment and the corresponding deduction should be addressed.
  
- ✓ Section 59A-14-12 Surplus Line Insurance
  
- ✓ Section 59A-6-2B: too vague, “received or written” premiums;
  
- ✓ Section 59A-6-5B: too vague, refund for “erroneous payment”
  
- ✓ Premium Tax Credits
  - Calculation of the 50% and 75% tax credit